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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF ALABAMA
5 SOUTHERN DIVISION
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7 UNITED STATES OF AMERICA,
8 Plaintiff,

9 v.

10 KIMBERLY H. BRANCH,

11 Defendant.

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Case No. CR-15-MHH-0154-S

Birmingham, Alabama

August 10, 2015

9:00 a.m.

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13 TRANSCRIPT OF TRIAL BY JURY, VOLUME I OF V
14 BEFORE THE HONORABLE MADELINE HUGHES HAIKALA
15 UNITED STATES DISTRICT JUDGE
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23 Court Reporter:

24 Chanetta L. Sinkfield, CCR, RMR
25 United States Federal Courthouse
1729 Fifth Avenue North
Birmingham, AL 35203

APPEARANCES

FOR THE PLAINTIFF: U.S. ATTORNEY'S OFFICE
Assistant U.S. Attorney,
AMANDA SCHLAGER WICK
JENNIFER SMITH MURNAHAN
1801 4th Avenue North
Birmingham, AL 35203

FOR THE DEFENDANT: WILLIAM H. BROOME, ESQ.
1110 Wilmer Avenue
P.O. BOX 1952
Anniston, AL 36202

Court Reporter: Chanetta L. Sinkfield, CCR, RMR
United States Federal Courthouse
1729 Fifth Avenue North
Birmingham, AL 35203

I N D E XAugust 10, 2015; VOLUME I*Direct Cross Redirect Recross***GOVERNMENT'S
WITNESSES**

PATRICK BYRNES	50	89	96	100
JEFF CREECY	101	136	140	

GOVERNMENT'S EXHIBITS**OFFERED****ADMITTED**

NO. 37	57	58
NO. 44	69	70
NO. 29	78	78
NO. 28	81	81
NO. 22	83	83
NO. 21	113	113
NO. 25	120	120
NO. 31	127	127
NO. 32	131	132
NO. 33	135	135

P R O C E E D I N G S

(9:14 a.m.)

THE COURT: Good morning. We are here this morning in Case 15-154, this is the United States of America versus Kimberly Branch. And the government has a number of pending motions in limine. So let's take those up now, please.

I believe the first motion in limine, please correct me if I am wrong, is Document 20. That's a motion concerning the exclusion of reference to possible sentence or conviction.

MR. BROOME: Judge, I concede that. I know better than to talk about that.

THE COURT: Okay. All right. So that motion is granted.

The second motion in limine is Document 21, that's the government's motion in limine to preclude the defendant from arguing contributory negligence of the victim.

MS. MURNAHAN: Yes, Your Honor. The United States believes that it's possible that the defense might raise some or attempt to elicit some evidence that the victim in this case, Nissan North America didn't care about any of these issues or encouraged any of these misreporting of RDR's. And it is just a -- we feel like it's a red herring, and it is not a defense to criminal conduct as we laid out in our motion in

1 limine.

2 So we would just ask the Court to preclude any defense
3 along those lines or any argument along those lines. That the
4 victim set itself up for and it kind of deserved what it got.

5 THE COURT: Well, reading your submission, I haven't
6 heard from Mr. Broome, so I don't know what evidence he may
7 try to elicit from witnesses. But while the Court recognizes
8 the line of case law that says that if a victim is negligent
9 and not discovering a fraudulent scheme, that that is no
10 defense.

11 But again, based on your description of what you think
12 Mr. Broome might try to do at trial, if it's the case that the
13 defendant [sic] knew about the conduct and essentially
14 acquiesced or approved of it, where is the fraud there then?

15 MS. MURNAHAN: You mean the victim?

16 THE COURT: Yes, I am sorry, if I misspoke.

17 MS. MURNAHAN: Well, you are correct, Your Honor.
18 If the victim in this case did acquiesce, that would...Okay.
19 That would be true. The issue, though, is materiality of the
20 information that was submitted to the victim in this case and
21 whether Nissan North America relied on it in making its
22 decision or in doing its audits or making its determination of
23 the validity of incentive payments in this case.

24 So their either failure to check or to dig deep enough
25 on an audit or their inability to dig deep enough on an audit,

1 which could be perceived as negligence on their part, is not a
2 defense to criminal conduct in this case.

3 THE COURT: Mr. Broome?

4 MR. BROOME: Judge, I never thought about using the
5 term contributory negligence until they used it. We would
6 expect some evidence to be that that this happened before,
7 that cars were RDR'd at their own dealership, and that they
8 were just backed out or corrected. That Nissan had allowed
9 this to go on at various dealerships for years. So I believe
10 I should be able to ask questions about that. I would never
11 use the word contributory negligence just as this happened
12 before at various dealerships.

13 THE COURT: The Court's going to deny the motion in
14 limine. The government, of course, is welcome to object to
15 evidence as it is presented. And if necessary, if the
16 evidence develops along the lines of Nissan may have been
17 negligent, I'll give an instruction to the jury that's
18 appropriate at the right time.

19 MS. MURNAHAN: Thank you, Your Honor.

20 THE COURT: Then we have one other motion in limine
21 I believe, Document 25, the government's motion in limine to
22 exclude the defendant's use of criminal records of witnesses
23 at trial.

24 MS. WICK: The government submitted Jencks material
25 to defense counsel. Some of the witnesses in case have

1 criminal history. Everything from fact witnesses to
2 cooperators. And as you can see in the government's motion,
3 we're not asking for anything essentially outside of Rule 609.
4 It's just essentially asking that certain witnesses, to the
5 extent that it's not basically arrests, because we did
6 disclose only arrests and not convictions to Mr. Broome -- I
7 think at least one of them had a misdemeanor, and a number of
8 theme actually had misdemeanors or even traffic citations, and
9 a number of them had convictions that were more than ten years
10 old. So we just wanted to put that on the record that for
11 those witnesses, those criminal histories would be
12 inadmissible under 609. But I don't think -- it's not
13 something that couldn't be raised at trial. We were just
14 hoping to streamline beforehand.

15 THE COURT: Mr. Broome?

16 MR. BROOME: Judge, the only issue -- and the
17 government may have told me, and I may have missed it -- there
18 is one gentleman we expect to testify is Forest Housner. And
19 I thought y'all were going to tell me whether you were going
20 to charge him.

21 MS. WICK: He has not been charged at this time.

22 MR. BROOME: So, Judge, I would ask that I be
23 allowed to ask him -- since he is in chain of command, he
24 would be Ms. Branch's direct supervisor. He would have been
25 the one that instructed her to do certain things. I would ask

1 the Court that I be allowed to ask him have you been charged
2 with any crimes relating to this incident.

3 MS. WICK: Since the government intended to discuss
4 that on direct, we have no objection.

5 THE COURT: Okay.

6 MR. BROOME: But the rest of it, Your Honor, I have
7 no objection to it being granted, except as it relates to Mr.
8 Housner.

9 THE COURT: All right. So the government's motion
10 in limine, Document 25, is granted with the exception
11 pertaining to Mr. Housner, as counsel have discussed.

12 All right. Any other preliminary matters that we need
13 to take up this morning?

14 MS. WICK: Yes, Your Honor, just the stipulations by
15 the parties. The government filed those under seal prior to
16 having original signatures. But I believe the Court may want
17 to do a colloquy, and we have the signed document ready at the
18 Court's discretion.

19 THE COURT: Okay. I have reviewed the parties'
20 proposed questions for voir dire. I didn't see anything that
21 jumped out at me as being an impermissible question. I would
22 just ask that you all listen to the questions that I will pose
23 to the members of the venire, because I think some of them
24 duplicate some of the questions that you all propose to ask,
25 and I think some of your questions duplicate. So to avoid

1 reploting the same territory, let's try to make sure we cover
2 each topic only once. Okay?

3 MS. WICK: Your Honor, I just realized that the
4 certificate of service states it was under seal, it was the
5 one from the one that we filed, so with the Court's
6 permission, since I am not -- we can file it without a
7 certificate of seal now and just hand file it. If that would
8 be okay with the Court, I think that would be easiest, but if
9 you would like, we can go back and redo a certificate of
10 service at lunch or at the next break. It's up to you.

11 THE COURT: Mr. Broome, any objection to the
12 government just filing that in open court?

13 MR. BROOME: No, Your Honor.

14 THE COURT: All right. It will be accepted that
15 way. Thank you.

16 MS. WICK: Permission to approach Tammi or Ms. Coe?
17 I apologize.

18 And would it be possible to get a copy of that at some
19 point?

20 THE COURT: Sure. Sure.

21 When would the parties like the stipulation presented
22 to the jury?

23 MS. WICK: Your Honor, there are actually a couple
24 of stipulations that are relevant to certain witnesses'
25 testimony. So if there's no objection from the defendant,

1 what we would like to do is request prior to those witnesses
2 testifying, if at a certain point during their testimony we
3 can read specific stipulations so that he has an opportunity
4 to know which ones will be read in, and then just ask the
5 Court, Your Honor, at this time -- the Court would ask that
6 stipulation number three be read into the record, and that way
7 everybody knows it's coming. There shouldn't be any
8 surprises. But some of them are very specific, and it makes
9 more sense, I think, for the jury to hear it at the time that
10 it's relevant.

11 THE COURT: In context.

12 MS. WICK: In context, yes, Your Honor.

13 THE COURT: Mr. Broome?

14 MR. BROOME: I have no objection to that, Your
15 Honor.

16 THE COURT: All right.

17 (A recess was taken at 9:24 a.m.)

18 (In open court at 9:28 a.m.)

19 MS. WICK: There was one other issue I spoke with
20 Mr. Broome about it briefly, but my understanding from the
21 Court was that you wanted to know the proposed questions that
22 we had for the panel, our submissions that both parties filed.
23 My understanding from Mr. Broome is that there are questions
24 that he intends to ask that are not on the proposed list. I
25 know some judges are very against objections in front of the

1 venire, and I wasn't sure if you wanted to address those now.
2 I am just concerned that because if the government doesn't
3 know the question until the defense counsel asks it, if we
4 have to object, I just did not want that to be an issue in
5 front of the panel.

6 MR. BROOME: Obviously, it's not an issue to me.
7 Judge, I am an old school lawyer. I ask questions depending
8 on what the answers were to precede the question.

9 THE COURT: You are talking about follow-up
10 questions, Mr. Broome.

11 MR. BROOME: Well, you can call it that, yes, Your
12 Honor.

13 THE COURT: Okay.

14 MR. BROOME: In the same subject matter, obviously,
15 we'll be talking about this case. But I can't guarantee her.
16 I am not a script reader. They may be. I am not. So I am
17 not going down a list of questions.

18 THE COURT: The Court has no problem with objections
19 during the jury selection.

20 MS. WICK: Okay, great. Thank you, Your Honor.

21 THE COURT: And I am working on my preliminary
22 instructions to give you all a copy of those so you can review
23 them.

24 (A recess was taken at 9:37 a.m.)

25 (In open court at 9:50 a.m.)

1 THE COURT: Ms. Wick, do you have something you
2 wanted to ask the Court?

3 MS. WICK: Yes, Your Honor. I apologize, Your
4 Honor. I think we meant to give this to Ms. Coe earlier.
5 There was a second binder for the Court's exhibit binder. It
6 was an update binder, essentially, and I just wanted to make
7 sure the Court had that.

8 THE COURT: I don't think I do. So that's great.

9 MS. WICK: I think it was sitting here. We had been
10 talking all morning to make sure you got it. This was kind of
11 a last moment.

12 THE COURT: Okay. Thanks.

13 Let me ask you all in preparing for voir dire and in
14 talking about the Court's opening instructions, in terms of
15 the indictment, you will see in the proposed opening
16 instructions that I use the summary of the two charges --
17 well, the two categories of charges that appeared in the
18 government's proposed jury instructions. To what extent does
19 either party wish for the Court to read the entire indictment
20 to the venire?

21 MS. WICK: Your Honor, from the government, I would
22 say to no -- I think what you had here was a fair summary. I
23 think in opening -- I'll touch on it briefly, but I mean, if
24 the Court would like to do it, the government would not have
25 an objection. But the government is certainly not going to

1 ask that the entire indictment be read.

2 THE COURT: The Court would prefer not to just
3 because I think that's a lot for the members of the venire to
4 try to digest getting into the case. But if the parties
5 request it, I want to be clear on the record about what the
6 parties' positions are to make sure I am taking that into
7 account.

8 Mr. Broome?

9 MR. BROOME: Judge, I think that's a correct way to
10 do it. It would not be to read the entire indictment because
11 two through 16 are the same charges and different dates.

12 THE COURT: Okay. All right. I just wanted to make
13 sure we were all on the same page. Thank you.

14 (Recess taken at 9:52 a.m., until 10:21 a.m.)

15 (In open court.)

16 (Voir dire examination of prospective jurors was conducted at
17 this point, reported but not transcribed herein.)

18 (The jury and alternate jurors were duly empaneled and sworn
19 by the courtroom deputy.)

20 THE COURT: Is there any preliminary business that
21 counsel need to take up with the Court before we begin?

22 MS. WICK: Yes, Your Honor, at this time, the
23 government would like to invoke the rule in terms of witnesses
24 that are present in the courtroom.

25 THE COURT: Okay. Anything for the defendant?

1 MR. BROOME: Judge, we would also like to invoke the
2 rule, but we probably would not have but one witness.

3 THE COURT: All right. With respect to that, there
4 is one thing that I need to talk to the lawyers about outside
5 of your presence. So I am going to let Tammi show you all the
6 jury room, that's going to be your home away from home when
7 you are not in the courtroom for the next few days. This
8 should take only a couple of minutes.

9 (Jury out at 1:39 p.m.)

10 (In open court.)

11 THE COURT: You all may be seated.

12 Ms. Marshall, can you come forward, please.

13 MS. MARSHALL: Yes, Your Honor.

14 THE COURT: Can you state your name for the record,
15 please.

16 MS. MARSHALL: Hope S. Marshall.

17 THE COURT: All right. Ms. Marshall, because of
18 some work that I did in other cases that are related to Ms.
19 Branch's cases -- you work for the White Arnold firm; is that
20 right?

21 MS. MARSHALL: Correct. White, Arnold, and Dowd,
22 D-o-w-d.

23 THE COURT: I believe your firm may represent one or
24 both of the Serra dealerships that's related to this
25 litigation. Can you explain that on the record, please.

1 MS. MARSHALL: Yes, Your Honor, we represent Serra
2 Oldsmobile, Serra Nissan, and we also represent Tony Serra and
3 Kristina Visser.

4 THE COURT: Okay. There are a number of witnesses
5 in this case who are either former employees of the
6 dealership, as I understand it, or may still be associated
7 with the dealership.

8 Why don't I ask Ms. Wick to please explain that on the
9 record.

10 MS. WICK: Yes, Your Honor. There is a number of
11 cooperating witnesses that were former employees. I don't
12 know if you would like me to name them at this time. I am not
13 sure how much detail you want me to get into. But there are
14 former employees who will be testifying. I believe the only
15 current employee that's testifying will be Ms. Branch based on
16 Mr. Broome's representation. And there are -- oh, I'm sorry,
17 there is one current employee who works at the Serra Visser
18 Nissan dealership and then a number of former employees who
19 will be testifying. And my understanding is that at least
20 some of the witnesses, their legal fees are being paid by the
21 dealership. And the concern was that if we invoke the rule,
22 that the content of their testimony not be shared with any of
23 the other witnesses.

24 THE COURT: So Ms. Marshall, the Court's concern
25 here is that you -- the public is welcome to the trial, but

1 there may be a challenging conflict issue here with respect to
2 your ethical obligations. And I don't want you to find
3 yourself in a difficult position. You can't communicate
4 anything that you hear in this case, if you are to stay in the
5 courtroom, to anyone who may be a witness in the case or
6 anyone who might try to relay information that you give them
7 to someone who will be a witness in this case. Because that
8 gets around the rule that's been invoked. Do you feel like
9 you can participate as a member of the audience in this trial
10 and not be placed in an awkward position with respect to your
11 ethical obligations.

12 MS. MARSHALL: Yes, Your Honor. My understanding,
13 and as I know, a lot of the witnesses that the government
14 plans to call, they are represented by separate counsel. So
15 yes, Your Honor, I have no communications with those
16 individuals anyway.

17 THE COURT: Okay. You understand your obligation
18 not to communicate anything that you hear in here to anyone
19 who might be a witness or anyone who may convey that
20 information to a witness?

21 MS. MARSHALL: Yes, Your Honor.

22 THE COURT: Okay. Anything else from counsel?

23 MS. WICK: Your Honor, the government's only concern
24 is that Ms. Marshall said that she represents, if I understand
25 it correctly, and I don't know what the title is now, Serra

1 Nissan Oldsmobile, Inc., the entity, but also Anthony Serra
2 and Kristina Visser? Some of the witness that are going to be
3 testifying are Ms. Visser's husband, and I believe other
4 employees that may still keep in touch with the Vissers? So,
5 I just want to make -- I just wanted to make the record clear
6 like in terms of if she communicates to her client, the spouse
7 of a witness, that could also, I think, fall into what the
8 Court's concern is about relaying information via the witness,
9 and I just wanted to make that clear.

10 THE COURT: Do you understand, Ms. Marshall, where
11 the line is drawn in terms of what you can and cannot
12 communicate?

13 MS. MARSHALL: Yes, Your Honor.

14 THE COURT: If there is a particular witness who you
15 feel you need to leave the courtroom for to be on the safe
16 side, because the safe side's always the better side, then of
17 course, the Court will expect you to exercise your obligations
18 and do so. All right?

19 MS. MARSHALL: Yes, Your Honor, and my only thing
20 that I would like to say to Ms. Wick is Mr. Visser and
21 Kristina Visser, they're husband and wife, if those two
22 communicate, I don't have anything to do with that. And I am
23 not going to tell her anything that he testifies about in
24 trial, or any of the other witnesses.

25 THE COURT: Okay. All right. Thank you.

1 (Jury in at 1:47 p.m.)

2 THE COURT: We are going to begin now with some
3 preliminary instructions from the Court. I believe you all
4 have copies of those instructions there. If you would like to
5 read along, you are welcome to. If you would rather just
6 listen, that's fine, too.

7 Ladies and gentlemen, your job in this trial will be
8 to decide the facts. I will be responsible for presiding over
9 the trial. And at the end of the trial, I will tell you what
10 the law is in the case. You will take the law that I give
11 you, apply it to the facts as you find them to be, and in a
12 fair and impartial manner render a true and just verdict.

13 Before proceeding with the trial, I want to go over
14 some of the rules and procedures that we will follow. This is
15 a criminal case. I want you to understand that the mere fact
16 that the defendant is charged with an offense does not raise
17 any presumption or inference that she is guilty.

18 On the contrary, the defendant has pled not guilty and
19 comes to this trial presumed to be innocent. It is the
20 government's burden to prove her guilt before the government
21 would be entitled to a guilty verdict. The indictment charges
22 Ms. Branch with 16 counts. Count One charges that the
23 defendant, Ms. Branch, knowingly and willfully conspired to
24 devise and intend to devise a scheme and artifice to defraud
25 Nissan North America, Inc., by means of materially false and

1 fraudulent pretenses, representations, and promises by use of
2 interstate wire communications and transmissions. Counts Two
3 through 16 charge the defendant with knowingly and with the
4 intent to defraud, devising a scheme and artifice to defraud
5 Nissan North America, Inc., and to obtain money and property
6 by means of materially false and fraudulent pretenses,
7 representations, and promises.

8 The indictment describes what the government intends
9 to prove in this case. The indictment is not evidence. At
10 the conclusion of the case, I will explain the law to you in
11 much more detail.

12 In a moment, counsel will make opening statements.
13 The opening statement is the time where each side has the
14 opportunity to explain what they believe the evidence will
15 show in this case. After opening statements, we will have the
16 presentation of evidence. The parties will call witnesses to
17 the witness stand, and the witnesses will be placed under
18 oath. Testimony that is given from the witness stand will be
19 evidence in this case. The opening statements, closing
20 arguments of counsel, and statements of counsel are not
21 evidence in this case, but the testimony will be evidence in
22 this case.

23 There may be exhibits offered, and if they are
24 admitted, they will also be evidence in the case, and you will
25 have them with you in the jury room. It will be your duty to

1 reach a verdict based on all the evidence that has been
2 received in this case.

3 Please do not form an opinion in this case until you
4 have heard all the evidence, heard the law that I will tell
5 you about at the conclusion of the case, and retire to the
6 jury room to deliberate in this case.

7 At the close of the evidence, I will instruct you as
8 to the law that you will apply in the case. Counsel will then
9 have an opportunity to speak to you in their closing
10 arguments. In the closing arguments, counsel will have an
11 opportunity to tell you what they think the evidence has in
12 fact shown during the trial, and they will have an opportunity
13 to discuss the evidence and all reasonable inferences that can
14 be drawn from the evidence in order to help you arrive at a
15 true and just verdict in this case. Following closing
16 arguments, I will give you a few final instructions. You will
17 then go into the jury room and begin your deliberations.

18 I will rule on objections during the course of this
19 trial. The ruling on an objection will be based on the rules
20 of evidence and our laws.

21 You should not concern yourself about any reason for
22 any ruling that might be made on an objection. It is the duty
23 of the attorneys to make objections where the attorneys
24 believe something is coming into evidence that is either
25 against our rules or our laws. You should not read anything

1 into the objection.

2 Some of the arguments on objections will need to be
3 made outside of your presence, or in the courtroom but in a
4 place in which you cannot hear the discussions. For example,
5 I may call the attorneys up to the bench to make arguments.
6 Please don't read anything into that. Sometimes the law just
7 requires the Court to handle objections in that manner.

8 You are permitted but not required to take notes. If
9 you take notes, the notes are for your personal recollection
10 only. It would be improper for anyone else to rely on your
11 notes, to decide what was or was not said. In addition, if
12 you take notes, be careful to pay attention, because while you
13 are writing something down, you may miss something else that's
14 being introduced into evidence.

15 The court reporter is taking down what is said in this
16 trial, but the transcript of testimony will not be ready in
17 time for you to use it in your deliberations. Therefore, you
18 need to recall the testimony. So please pay close attention
19 to all of the witnesses.

20 Until this case is submitted to you for your
21 deliberations, you must not discuss this case amongst
22 yourselves or with any person or allow anyone to discuss this
23 case with you or within your hearing or within your presence.
24 If anyone attempts to talk to you about the case, you are to
25 excuse yourself from their presence, and report the attempt

1 immediately to a member of the court staff.

2 The attorneys, parties, and witnesses are not
3 permitted to talk to you during trial. And I am sure you've
4 been told this before, but even an innocent discussion, which
5 has no bearing, whatsoever, on anything involved in this case
6 could appear to one side or the other or to someone else to be
7 an improper conversation. So please do not have a discussion
8 or talk with any of the participants in this trial. If you
9 get on the elevator with an attorney or see an attorney in the
10 hallway, and the attorney does not speak to you, the attorney
11 is not being rude. The attorney is just following the Court's
12 rules.

13 You are not to visit the scene of any occurrence
14 involved in this case or make any investigation whatsoever.
15 Please do not look anything up, and don't allow yourself to be
16 exposed to any media report or news report about this case.
17 We never know what case is going to have news coverage. But
18 if you are reading a newspaper or a news story on the internet
19 and you realize that you are reading an article about this
20 case, please stop reading the article. If something comes on
21 television about the case, just turn the television off or
22 leave the room. Please do the same thing with the radio.

23 You should not take any type of resource book or
24 similar materials back into the jury room with you. By the
25 same token, you shouldn't do research on your cell phones, if

1 you have the ability to do that. You should decide this case
2 based solely on the evidence presented in this Court and the
3 law as I charge you.

4 All right. With that, we are ready to begin with
5 opening statements. The Court will hear from the government.

6 MS. WICK: Thank you, Your Honor. If you could just
7 give us a moment, we're going to try to set this up.

8 Ladies and gentlemen of the jury, I just want to
9 apologize for the hacking and the coughing. I'm coming down
10 with a cold. And so, I am hoping to get through all of this
11 without a cough drop or water, but I will do my best.

12 When I was in high school, my brother and I shared a
13 red, real crappy Ford Escort, and I once got into a car
14 accident, and I didn't tell my mom. And when I got home, and
15 I went and got her nail polish out of the medicine cabinet and
16 took it and tried to dab it and hide, you know, what had
17 happened on the front of the car. Because it was completely
18 my fault. The accident was completely my fault.

19 When she got home and she asked me what happened, you
20 know, how did your day go? And I said, well, there was a
21 fender bender. This woman in front of me slammed on her
22 brakes. There was a malfunction in my brakes. There was
23 clearly something wrong with my car. I think the car may be
24 defective. It wasn't my fault. But there was a little tiny
25 scratch on the front of the car.

1 So we go out to the garage, and she looks at it, and
2 she says, I don't see anything. I was like, well, there was
3 barely any damage. Of course, she goes down and looks and she
4 sees -- because she is an intelligent woman -- that I had used
5 the nail polish to dab over what I had done. And she looks at
6 me and she said, well, you didn't have to lie to me. I said,
7 I didn't lie. She said, if you have to cover something up,
8 you are lying. If you were telling the truth, what was there
9 to cover up?

10 That's what this case is about. This is a case about
11 a group of people at a car dealership who lied to make money
12 they weren't entitled to, and then tried to cover it up and
13 hide it from Nissan North America. This entire case goes back
14 to what my mom said. When you are doing something honest, you
15 don't try to cover it up.

16 Earlier, the judge told you my name is Amanda Wick. I
17 am an assistant U.S. attorney here in the U.S. Attorney's
18 Office in the Northern District of Alabama. And together with
19 my co-counsel, Jennifer Murnahan, who is also an assistant
20 U.S. attorney, our paralegal, Julie Gold, Special Agent Kelly
21 Clark and Katherine Henken-Gerhardt with the IRS. We
22 represent the United States of America in the United States
23 versus the defendant, Kimberly Branch.

24 A moment ago, I told you that this case was about a
25 group of people lying to make money. And at its heart, that's

1 what it is. And the evidence that the government has to put
2 on as the Court told you, we have to prove beyond a reasonable
3 doubt that the defendant wasn't just there, she wasn't just
4 present, she didn't just happen to be in the wrong place at
5 the wrong time, but that she knew the unlawful purpose of the
6 plan. That she intended to lie to deceive and cheat Nissan
7 North America. That she was in fact a part of the plan. That
8 is our burden. And I am going to discuss with you the
9 evidence that the government intends to put on to show that we
10 will meet our burden in this case.

11 So I want to talk briefly with you about the
12 background of this case. There was a fraud investigation at
13 Serra Nissan that did not involve this specific -- the
14 evidence you are going to hear in this case. It involved bank
15 fraud and false documents being submitted. The reason that's
16 relevant is because you are going to hear from some of the
17 defendants in that case who have already pled guilty. They've
18 already admitted the crimes that they committed while they
19 were working at Serra Nissan. And you are going to hear, that
20 as part of their cooperation agreement with the government,
21 they had to tell 100 percent the truth, not just about the
22 crimes that they committed while they were at Serra Nissan and
23 the crimes that were at issue in that case, they had to tell
24 the government about all the illegal activity that they had
25 committed. And some of those people were involved in this

1 conspiracy, the one that you are going to hear about in this
2 case that involved upper-level management at Serra Nissan and
3 including sales managers, finance managers, the defendant, the
4 controller, the director of operations, and the executive
5 manager. And you are going to hear from all of those
6 witnesses.

7 The reason that's relevant is because those witnesses
8 are going to include cooperators who have already pled guilty.
9 They've already admitted their guilt. Some of them have
10 already been convicted. They're going to come before you as
11 part of their cooperation agreement and testify under oath in
12 this case. We talked about that a bit briefly in voir dire,
13 and the judge is going to instruct you on the law about that
14 at the end. So I don't want to spend much time on that. But
15 you are going to hear from the co-conspirators in this case
16 what the fraud was about and why they did it. They did it to
17 make money.

18 This fraud, the fraud that you are going to hear about
19 in this case, involved 15 deals; 15 vehicle transactions that
20 Birmingham -- the Serra Nissan store in Birmingham reported as
21 having been stolen from Birmingham, when, in fact, those cars
22 were sold at a car dealership in Cullman, Alabama, called
23 Serra Visser Nissan. Two different car dealerships, same
24 owners. Okay?

25 The indictment that the Court has already talked with

1 you about charged 16 counts -- and I am not going to spend a
2 bunch of time, because as the Court said, she is going to go
3 over the law with you extensively at the end. But I want you
4 to understand that because it's the framework for all of the
5 evidence that the government is going to present to you during
6 the course of this case. Count One, as the Court said,
7 charges the conspiracy. That's essentially that the defendant
8 agreed with at least one other person to commit an unlawful
9 crime. The agreement to commit a crime is a crime itself.
10 Counts Two through 16 charge the crime called wire fraud, and
11 essentially, that's the submission of material, materially
12 false information via wire transmissions. In this case, it
13 was 15 wires, because each time they reported the deals as
14 sold in Birmingham, they reported them over the internet from
15 the Birmingham car dealership to Nissan North America, which
16 you will hear from the witnesses located in Franklin,
17 Tennessee. Each time they submitted that lie that the car was
18 sold in Birmingham over the wire, across the interstate lines,
19 with the intent to deceive and cheat Nissan, that was a
20 commission of wire fraud. So those 15 counts are essentially
21 the 15 deals you are going to hear over and over referenced in
22 this trial. The 15 deals. The 15 deals. This entire case is
23 about 15 vehicle transactions; cars that were sold in
24 Birmingham that they lied about that were actually sold in
25 Cullman. That simple.

1 I want to spend a moment talking about the
2 controller's role at Serra Nissan. To be clear, you are going
3 to hear that Ms. Branch, the defendant, was the controller at
4 Serra Nissan. I don't know about you, I do not know what the
5 controller was. That's what we called my mother. It turns
6 out in this case, the controller is the accountant. And not
7 just the accountant, she is the bookkeeper at Serra Nissan.

8 Serra Nissan is a multimillion dollar dealership that
9 sells sometimes hundreds of cars in a quarter. Millions of
10 dollars come into this dealership. It is the defendant's job
11 to reconcile all of that. Because she was the controller not
12 just for Serra Nissan in Birmingham, she was also the
13 controller for Serra Visser Nissan. Because even though it
14 was located in Cullman because it had the same owners, all of
15 the accounting was done in Birmingham for both stores. That
16 meant all the paperwork was coming down from Cullman.
17 Everything was being processed in the defendant's office. She
18 was the hub. And that's important because in order for them
19 to lie to Nissan and do all the things they did to cover this
20 up, which you are going to hear from our witnesses, it all
21 came through her office, the accounting department at Serra
22 Nissan Birmingham.

23 She had incredibly extensive day-to-day
24 responsibilities. You are going to hear from multiple
25 witnesses, both from Nissan North America and people who

1 worked at the dealership that are going to tell you every
2 dollar that came into that store, she had to know how they
3 earned it. Every incentive payment that they made, she had to
4 know which car it came from. Every expense, every dollar they
5 spent on toilet paper, she had to know the pool that it came
6 from. They had multiple accounts, giant lump sums coming in
7 from Nissan. This was not somebody who had no idea what was
8 going on in the sales department. This was somebody who knew
9 every sale, every financial transaction, every line item that
10 she had to reconcile as the accountant of a multimillion
11 dollar dealership. This wasn't her first dealership. She had
12 extensive experience in the car industry prior to coming to
13 Serra Nissan.

14 I talked briefly about her role in reconciling. You
15 are going to hear from people at Nissan who said not only was
16 it her job to reconcile the incentives, but she was also
17 incredibly important to the audit process. You are going to
18 hear from Nissan North America's auditors because the audit
19 process is what they had to do to find errors. Because Nissan
20 surprisingly does not go around the country trying to ferret
21 out fraud. That's our job, as the government.

22 What Nissan does is it has a process to try to find
23 errors, assuming that car dealerships report information, and
24 sometimes they make mistakes. And if there's a mistake,
25 there's a charge back process. If it turns out you made a

1 mistake, no problem, we charge you a fee if it's too high.

2 But otherwise, we just take back the money that we paid you
3 that you weren't entitled to. No problem.

4 The defendant knew about this process because she was
5 responsible for submitting the accounting information to
6 Nissan. So when Nissan called and said, hey, these are the
7 200 deals that we're going to audit, meaning the accounting
8 information, she was the one to provide it. And you are going
9 to hear about her role in this fraud, which she knew exactly
10 how to provide that information, so that if they got audited,
11 they could hide it from Nissan that they have lied about where
12 these cars were sold in order to make money.

13 I am going to talk briefly about the conspiracy and
14 the 15 wire frauds that you are going to hear about, these 15
15 deals. In March 2013, Nissan North America had huge a
16 incentive program. It's called the dealer volume bonus.
17 Their fiscal year ends March 31st. It's a big push. Sell,
18 sell, sell, sell, sell cars, because if they hit these tiered
19 incentives, they got more and more money per car. They could
20 get up to \$700 per car, which of the 170 cars that they had to
21 sell was over \$120,000, which for me, is a lot of money. And
22 for the car dealership, you will hear from these witnesses,
23 they will testify that was the big money. They were all
24 chasing big money. It was imperative that they hit this
25 incentive.

1 You are going to hear from the witnesses of the
2 dealership who were working there at the time who said, oh,
3 boy, Birmingham, we are not going to make it. But you know
4 what, Cullman already hit their incentive. And if Cullman
5 keeps selling cars, they're not going to get anything more, so
6 why don't we take all the cars that Cullman is selling and
7 just tell Nissan we sold them in Birmingham. And that's what
8 they decided to do. From the top down, from the executive
9 managers, the number one person at Serra Nissan you are going
10 to here him testify, they decided to lie to Nissan North
11 America. They knew it was wrong. They knew if Nissan knew
12 that they were lying, they would have to give back that money.
13 They all knew it.

14 So what did he do? He created fraud instructions.
15 The evidence will show that he actually typed out here is how
16 we have to do this to hide this from Nissan North America.
17 You are going to see that. He is going to come in and explain
18 it to you -- explain exactly how they mapped out the fraud.
19 Because in order for them to get this right, Cullman had
20 stopped doing certain things. They stopped making documents
21 because Birmingham was going to have to make those documents
22 for them to get away with this.

23 That map of fraud was sent to the Cullman dealership,
24 and you are going to see it. You are also going to hear from
25 the people involved in the conspiracy including the director

1 of operations, Forest Housner, who is going to tell you that I
2 had instructions from the number one guy -- he went to a sales
3 manager and said, log these deals, send them to Nissan, and
4 tell them they were sold in Birmingham.

5 Then he went to a finance manager. You are going to
6 hear from that finance manager. And he said, your job is to
7 create 15 bonus deal jackets to show that these cars were sold
8 in Birmingham. Because what happens if Nissan North America
9 comes and says, okay, well, you have given us your accounting
10 data, now we want to see the paper. We want to see the actual
11 paper that you gave the customer, because it needs to match in
12 order for you to keep that money. So they created 15 fake
13 Birmingham deal jackets, false documents. Completely bogus
14 documents. They all knew it was bogus. You are going to hear
15 from every single one of them. The sole point of this was to
16 hide that information in the event that they were audited by
17 Nissan. You are going to hear that over and over. The
18 purpose was to hide it from Nissan in the event that they got
19 audited. Because if they got audited, what happened? They
20 had to give back the money. And what did everybody not want
21 to do? Give back that money.

22 You are going to hear from Mr. Green, and you are
23 going to hear about these 15 fake deal jackets that he was
24 instructed to create. Then you are going to hear evidence
25 about the defendant's critical role in this fraud. Because I

1 just mentioned to you, and I think even defense counsel said
2 it in voir dire, it is the government's burden, we have to
3 prove to you beyond a reasonable doubt she wasn't just in the
4 wrong place at the wrong time. She didn't just happen to be
5 standing there when this conspiracy was going on around her as
6 if she was in a cave dome. We have to prove to you that she
7 had the intent to defraud beyond a reasonable doubt. So I
8 want to flag for you -- I want to talk about what evidence is
9 going to show in this cause because that is going to be the
10 single most, important critical thing for you to determine in
11 this case. The facts may not even be that much in dispute.
12 The biggest issue is did she have the intent to defraud Nissan
13 North America? Did she know what they were doing? Was she a
14 part of this conspiracy? And the evidence is going to show
15 that when the number one guy sent that fraud map to Cullman
16 and said, here is what we do, you stop creating these
17 documents, stop making bills of sale and title applications,
18 those have to go to Birmingham to be created. And it's
19 important, it's very, very important that these deals be
20 booked into the accounting system in Birmingham. What does
21 that mean?

22 The defendant's job was to finalize these deals in
23 their accounting system called Reynolds and Reynolds. This is
24 how she kept all of the records. This is how she reconciled
25 everything -- everything to be paid, everything to be

1 received. Everything was reconciled for the Reynolds and
2 Reynolds accounting system. The number one guy said in order
3 to make this work, we have to book these deals in accounting
4 under Birmingham. Because if Nissan checks, we have to send
5 that accounting information to them, and they're going to see
6 if we don't book it in Birmingham that those cars were sold in
7 Cullman and we lose the money.

8 But the defendant was very smart. And she was in
9 charge of all of the finances at this dealership. And she
10 realized that if she booked those deals in Cullman, it was
11 going to create -- if she booked those deals in Birmingham, it
12 was going to create a lot of work for her. A lot. Paperwork,
13 moving money around, if the cars were financed in Cullman -- I
14 could go on and on for an hour about how much work it was
15 going to create for her accounting department if she actually
16 followed these instructions. So, she modified his
17 instructions. She didn't just blindly follow them and say,
18 okay, I have no idea. She said, you know what, I didn't book
19 those in accounting. Instead, I kept a manual list on my desk
20 so that in the event that we get audited, I can just add it to
21 whatever dealership we need to to not get caught.

22 She knew exactly what she was doing when she changed
23 those instructions to create less work for herself and to make
24 sure that they didn't get caught when Nissan audited. She had
25 a vested interest because you are going to hear from one of

1 the witnesses that Ms. Branch not only made \$120,000 in base
2 salary as an accountant at a car dealership, she also made
3 something called two percent of net. You are going to hear,
4 and the evidence will show that that two percent of net is the
5 incentive, includes incentive money. She had a vested
6 financial interest in making sure that they kept all of the
7 incentive money. Because if they got caught, who wants the
8 money? The dealership and her.

9 You are going to see e-mails that they sent to each
10 other. Because in June, all of these deals, all of this
11 happened in March 2013. Okay. They submit the 15 deals
12 because at the end they're going for that big bonus money at
13 the end of March 2013.

14 You are going to see the defendant's own words,
15 e-mails that the number one guy sent to her and the number two
16 guy. He sent to her, when Birmingham missed their objective
17 two months ago and we used Cullman sales, did he book these
18 units in Reynolds accounting under Birmingham? I just wanted
19 to make sure we did when Nissan audits us, they get a log of
20 every deal booked in Reynolds." Ms. Branch responded, "not
21 with -- I have no idea what you were talking about. Not with,
22 what do you mean? Not booked in Reynolds if Nissan checks.

23 No signs of ignorance. She responds two days later,
24 these deals were not booked in accounting, but I have a list
25 of these deals and can manually add them to any report that

1 Nissan requires. Jeff, also created Birmingham deal jackets
2 for each of these deals so we would have it if they ever
3 requests the deal to be pulled."

4 Remember I was telling you about the audit process
5 where they come back and get the paper and they want to make
6 sure the paper matches? "So we would have it if they ever
7 request the deal to be pulled."

8 You are going to hear from Nissan auditor that's going
9 to tell you that when they had an audit, two weeks before they
10 did before all of this, Ms. Branch was the one responsible for
11 pulling all of those deal jackets for Nissan. She knew
12 exactly what they were going to ask for, she knew exactly
13 where they were booked, and she knew exactly how to cover it
14 up. In case there was any lack of clarity about what they
15 were doing and what the purpose of the conspiracy was, Mr.
16 Visser responds, okay, just manually add them or manually
17 remove them if they audit Cullman when they do the next audit.
18 In Alabama, the factory has 12 months from the date the
19 incentive was paid to conduct an audit. It doesn't get any
20 clearer than that. When you are trying to hide something in
21 an audit, you know that you are going to do something
22 dishonest.

23 You are also going to hear testimony that attached to
24 this listed e-mail found on Ms. Branch's desk during the
25 execution of a search warrant was a list, a list of the 15

1 deals. That says SVN deals to Jeff. Pull SVN jackets. There
2 are four bunches of dates. Because those are each of the
3 dates that she took the Cullman deals, the actual deal jackets
4 and took them into Jeff Green's office for him to copy and
5 make the bogus jackets.

6 You are going to hear from Mr. Green. He took the
7 bonus deal jackets to a man named Gerald Shepard whose job was
8 to submit that information electronically to Nissan, to submit
9 the lie that they were sold in Birmingham, and then, he took
10 those originally Cullman jackets, the original ones and
11 brought them back do Ms. Branch so that she would have them.
12 Four trips she made bringing the original jackets to the guy
13 whose job was to doctor them up. In case there's any lack of
14 charity about what she thought he was doing, she was kind
15 enough to put it in the e-mail, explaining that his job was to
16 make the Birmingham deal jackets in case Nissan asked that
17 they be pulled.

18 You are also going to hear and you are going to learn
19 more about the car industry than you ever wanted to know in
20 this case. Again, I apologized at the beginning. But you are
21 also going to hear on that list of deals on her desk is a
22 line, a very incredibly important line that says pay Serra
23 Nissan VW or SEC plus. What that meant was -- I told you
24 earlier that Ms. Branch was responsible for all of the
25 payments, every dollar that moved through that multimillion

1 dollar car dealership, she was responsible for. It turns out
2 that the guys at the top did not understand the money, but she
3 did. In order for this to work when those people in Cullman
4 bought warranties, they had to move the money around and pay
5 Birmingham for those warranties. So you are going to hear how
6 it was incredibly important for her in order to help this
7 coverup to pay for those warranties. So she was kind enough
8 to make a note for herself when she helped them to cover up
9 and pay Serra Nissan VW for SEC plus, the security-plus
10 extended warranties.

11 I talked briefly about the attempted coverup. But I
12 want to go into it, so you understand when you hear the
13 evidence from these witnesses. You are going to hear that on
14 June 17, 2014, over a year after they submitted the false
15 information, when the government found out that they had lied
16 and submitted these 15 deals, we issued a subpoena, and we
17 said, Serra Nissan, please give us the 15 Birmingham deal
18 jackets that are associated with these deals. That was on
19 June 17th. On June 18th, Mr. Visser, the executive manager at
20 the Serra Nissan store, e-mails Nissan North America and says,
21 hey guys, year-and-a-half later, turns out we may have logged
22 these 15 deals incorrectly. And what would we do to correct
23 that?

24 The next day. In August, Mr. Visser sends a letter
25 saying, hey, we did this self audit, we found these 15 deals,

1 we're just going to return this money. No harm, no foul.
2 We're just giving this back. On August 11th, 2014 -- sorry.
3 I skipped a step. August 1st, 2014, in response to the
4 subpoena, they were asked to give us those 15 Birmingham deal
5 jackets. These were never produced. You are going to see the
6 15 Cullman jackets. The 15 original Cullman deal jackets.
7 And a deal jacket is a weird thing. Essentially, it's a
8 folder that has a lot of paperwork. If you ever bought a car,
9 so they take all that paperwork, and they just stuff it in a
10 little jacket. It's called the deal jacket.

11 Yu are going to see 15 deal jackets for Cullman
12 because that's all that was ever produced. Nobody has ever
13 since seen the 15 bogus Birmingham deal jackets. We have no
14 idea where they are. But in response to that subpoena, the
15 defendant, Ms. Branch, signed what's called an attestation.
16 And it's a certification and acknowledgment under penalty of
17 perjury, under oath, that those were the records in response
18 to the subpoena. That's it. Those 15 deal jackets, those
19 Cullman deal jackets, that's all the documents that we have.
20 Never mentioning at all that she clearly knew that there were
21 15 Birmingham deal jackets created in order to hide this.

22 The government will not be showing you those because
23 we have no idea where they are. August 11th, 2014, that's
24 when Mr. Visser tries to send back a check. And August 21st,
25 2014, Ms. Branch cuts a check trying to return the money they

1 got from this. You are going to hear from Nissan. It's
2 \$68,400 that they ended up getting for this. That's what this
3 lie netted them, \$68,400. People submitting the lies, false
4 deal jackets being created. \$68,400 was the amount of money
5 it took for all of these people at the dealership to say let's
6 lie, let's create documents, let's do the wrong thing and
7 submit information from a wire over interstate lines.

8 At the end of this case, the judge is going to
9 instruct you on the law, and we're going to come back and make
10 arguments. But I would like you to remember one thing during
11 the course of this, because it is the most important thing
12 that the government has to prove to you, and it is our burden
13 and our burden alone. When you are hearing the evidence about
14 Ms. Branch and her involvement in this, I want you to think is
15 it possible for somebody to put blinders on and have
16 absolutely no idea and claim they had no idea what was going
17 on when they participated in the coverup? Because when you
18 think you are doing something right, why would you have to
19 cover it up?

20 At the end of this case, after we present witnesses,
21 exhibits, and all the evidence that you are going to see, we
22 will ask you to return the only verdict that makes sense in
23 this case, and that is the verdict of guilty on all 16 counts.
24 Thank you so much.

25 THE COURT: Mr. Broome.

1 MR. BROOME: Yes, Your Honor. I have a fairytale
2 story to tell you that looked like it was going to have a
3 fairytale ending about a young 16-year-old young lady who goes
4 to work, pays her way through the University of Georgia, gets
5 a degree, falls in love, marries her high school sweetheart,
6 has two beautiful children -- Ethan who is now 8 and Courtney
7 who is now 5. She works all the time from the time she was 16
8 until the time she was now 34.

9 She started out as a high school work study student at
10 a dealership working as a clerk. She gets a really good job
11 in Birmingham as a controller. She goes to work there and
12 moves her family from Georgia to here. She is just living the
13 American dream. She has done well, put her husband through
14 college. He is now out, and he is employed. And this is just
15 an American success story for a young lady.

16 She goes to work at Serra Nissan -- it has a lot of
17 different names, but basically we'll call it Serra Nissan
18 Birmingham. There was a Serra Nissan Visser -- a Serra Visser
19 Nissan in Cullman, then there's a Serra Nissan, and Serra
20 Volkswagen. She's the controller for all three.

21 I told you she worked in the car business since she
22 was 16 as a title clerk or a clerk or a billing clerk or an
23 office manager. She had never worked for a dealership that
24 had more than one location for the same type of car. We'll
25 call it Birmingham to keep me from being confused. The

1 Birmingham Nissan dealership and the Cullman dealership. And
2 that will become important as this case progresses.

3 She worked for dealerships that were actually bigger
4 than the one she was working for, and she worked for
5 dealerships that owned several different type cars that they
6 were selling but never one that had two Nissan or two Ford or
7 to Honda or two Oldsmobiles. That will become important later
8 on.

9 She was kind of overwhelmed. I believe the evidence
10 will be that some of the accounting practices and the
11 reconciliations before her time were a little disorganized, we
12 would say.

13 She goes to work in Birmingham, which was really the
14 main office, even though it was a Cullman store. She goes to
15 work in December 2012. It's a nice day. Some time in March
16 of 2013, nothing unusual other than she is still trying to
17 reconcile everything, and there's this big year-end push, like
18 Ms. Wick told you. She had a real confidante, mentor, boss
19 whatever you want to call him who was Forest Housner. He was
20 her immediate supervisor, and Forest was kind of like a
21 father-figure to her. He would tell her about the workings of
22 the dealership and the personalities of the dealership, the
23 personalities of the owners. And Forest was her mentor. She
24 never thought Forest would tell her to do anything wrong or
25 illegal.

1 One day some time in March -- I am sorry, I don't have
2 a fancy PowerPoint -- I do have a clipboard. Some time in
3 March, she gets a phone call from Forest, who says Birmingham,
4 something like this, you will hear the testimony. Birmingham
5 store is not going to meet their objectives. We're going to
6 send some Cullman deals down to Birmingham. It doesn't sound
7 so wrong, does it? Fairly innocuous instruction from your
8 immediate supervisor. We're going to send some Cullman deals
9 down to Birmingham because Birmingham is not going to meet
10 their incentives.

11 You need to do two things. What? We believe the
12 evidence will be that Forest will tell her. Number one, you
13 need to keep a list of the deals. And number two, you need to
14 take the deal jackets to Jeff Green. That seems fairly
15 honest. It seems fairly straightforward.

16 So she does that. She trusted Forest, again, like I
17 said, she didn't think he would tell her anything that turned
18 out to be wrong. She is not experienced with having two
19 dealerships with the same type car. Is she gullible? I don't
20 know. But you do what your boss tells you to do. And she did
21 that.

22 Now later on -- and I believe Ms. Wick correctly
23 quoted the e-mails -- some time in June, she keeps a list.
24 And oh, by the way, this great coverup that she is talking
25 about, she keeps -- well, thank you. That happens to be the

1 list. She keeps the list right there on her desk. It's a
2 real great coverup. I got it right there on my desk.

3 Some time several months later, some time in the
4 future, she gets an e-mail from Randy Visser, who is on up the
5 food chain. It says when Birmingham missed their objective,
6 just like Ms. Branch said two months ago, Ms. Wick said. Two
7 months ago when we used Cullman deals, did we book these units
8 in Reynolds accounting under Birmingham. I just wanted to
9 make sure we did. When Nissan audits us, they did a lot of
10 every deal booked in Reynolds. You will hear about accounting
11 systems that was the accounting system.

12 I believe if my calendar was correct, that e-mail on
13 June the 1st, 2013, was on a Saturday. And Kim responds on a
14 Monday, just like Ms. Wick told you, these deals were not
15 booked in accounting. They got the list. They got the list
16 and can manually add them to any report Nissan requires. It
17 seems pretty straightforward there. Jeff also created a
18 Birmingham deal jacket for each of these so we would have it
19 if they ever request the deal to be pulled.

20 Well, you are going to hear a lot about deal jackets.
21 Ms. Branch is going to tell you -- I think I have already
22 forgotten -- the Birmingham deal jackets were green, and the
23 Cullman deal jackets were blue. Like I've got some green and
24 blue file folders over here. Something like this
25 (indicating).

1 Ms. Wick alluded a lot to a lot of the things that had
2 gone on at Serra Nissan beforehand, and you are going to have
3 what I would call a cast of characters sit up here, or a cast
4 of convicted felons and/or above that will sit up there and
5 tell you, oh, yeah, we bogused up every document known to God
6 and man, finance reports, credit reports, income, affidavits,
7 bank statements, we bogused up everything. What you are not
8 going to hear is that Kim had anything whatsoever to do with
9 that, not at all. But you are going to hear about these blue
10 and green deal jackets.

11 Jeff made the deal jackets because you put the Cullman
12 deals in a different color deal jacket. For all we knew, make
13 some deal jackets doesn't sound so clandestine or so criminal
14 wire fraud to me. I don't think it will to you good folks
15 when it's all over. So he did that.

16 Then later on, I think it was about six month later,
17 July the 27th, 2013, there is another e-mail -- I don't know
18 how many e-mails were involved. These are the only ones they
19 could find that were really relevant to this case. This would
20 be from Mr. Visser to Kim. Okay. He is kind of responding to
21 her e-mail from June the 3rd, two months later almost: Just
22 manually add them, or manually remove them if they are in
23 Cullman when they do the next audit. In Alabama the factory
24 has 12 months from the date the incentive was paid to conduct
25 an audit.

1 Again, that doesn't seem very criminal there. I am
2 sure Kim appreciated them talking about how much of an
3 integral part she was in this. She didn't know nothing except
4 make a list of the deals, give the jackets, or give the
5 Cullman deals to Jeff. That's pretty much all we did.
6 Period.

7 Now, later on when the government starts in on all
8 these other fraudulent practices here and starts charging
9 folks, so for months they were issuing subpoenas to the
10 dealership, we need this information about this deal, and we
11 need this information about this deal, we need information
12 about this deal, about the financial bank fraud that the cast
13 of characters will tell you about. She responds to all of
14 those subpoenas, gets whatever deals that they want. She is
15 dealing with these nice ladies over here, the government
16 agents, giving them what they ask for.

17 You know, if we're really the brains of the group
18 here, I don't think we continue to need this list on our desk
19 when we know the government's coming -- weekly is probably an
20 exaggeration -- but they're coming a lot and getting documents
21 from us about various things. People are being charged for
22 various things. People are pleading guilty to various things.
23 But I am keeping this list on my desk.

24 Kim did know about the Cullman deals being transferred
25 to Birmingham. No question about that. We're going to tell

1 you that. And she knew that was going to create somewhat of
2 an accounting nightmare. Because like Ms. Wick said, there
3 were warranties that customers for cars involved in Cullman
4 that if the deals got transferred to Birmingham, some of them
5 have had to transfer the money to pay from those warranties
6 from Cullman to Birmingham. Then there was incentive money
7 that the salesman in Cullman would get, which they had to send
8 from Birmingham to Cullman. So she is thinking, this is just
9 a nightmare, as far as an accounting situation.

10 There were rebates that customers got that would have
11 to come from Birmingham from the deals that were sold in
12 Cullman. So it's going to be a nightmare for an accounting
13 person. Please don't get mad at me, but accountants are
14 basically pencil pushers. So there's a lot of things that are
15 going to have -- a lot more work on her for these 15 deals.

16 They talk about these instructions for how to -- I am
17 sorry I missed it on the PowerPoint -- fraud instructions. I
18 tell you again what you are not going to hear. A lot of times
19 in a trial what you don't hear is a lot more important than
20 what you do hear. You may say, Bill, you just lost me. Bear
21 with me. You are not going to hear anything about Kim having
22 anything to do with those so-called fraud instructions. You
23 are not going to hear anything about Kim even knowing about
24 those fraud instructions. She'll tell you she saw them for
25 the first time a few days ago or a month ago in my office.

1 Now they talked about the subpoena. They subpoenaed these 15
2 deals. You go in the file cabinets and all you got is the 15
3 deals. There's a Cullman deal, the original paperwork from
4 the Cullman deals. That's all you got. When they subpoena
5 them, you give it to them. So she answered the subpoena and
6 responded to the subpoena with all they had. Those deals.

7 Folks, at the end of this trial, we're going to ask
8 you to find her not guilty. She honestly held this opinion
9 and honestly thought what she was doing was not wrong. Nobody
10 ever told her, and we don't believe you'll ever hear this from
11 anybody on the witness stand that you are not supposed to
12 transfer deals from one dealership to another. It's an
13 accounting problem, but it's not fraud.

14 Kim will tell you, I never intended to defraud Nissan
15 North America. I never intended to defraud anybody. I just
16 did what they told me to do. And we are going to ask you at
17 the end that the government has to meet their burden to prove
18 to you beyond a reasonable doubt that her honestly held
19 opinion cannot be fraud, even if her opinion turns out to be
20 wrong.

21 Now, Ms. Wick gave you an example about her mom, and I
22 am glad I didn't try that on my dad. But let's just say you
23 and I decided today, I asked one of you good people to give me
24 a ride to a bank at lunch. I needed to go get some money to
25 make a deposit to a bank. And you give me a ride. You are

1 nice enough to give me a ride. We get a couple of blocks from
2 the bank, and I say that's close enough, there's a traffic jam
3 down there, just let me out right here. And I go pull a gun
4 out of my pocket and rob a bank, and I get back in the car
5 with you. We may get about halfway back to the federal
6 building, and there's Birmingham's finest with the blue
7 lights. You are probably going to ask me, I wonder what
8 they're doing? I am going to say, I just robbed a bank. You
9 need to drive. Did you know I was going to rob the bank? Are
10 you guilty of robbing the bank if you didn't know I was going
11 to rob the bank? I don't think so. And that's exactly what
12 we have here.

13 We did most of the things the government is going to
14 tell you for a day or two or three than we did. But we had an
15 honest belief that there was nothing wrong with what we did.
16 And at the end, we're going to ask you to turn this fairytale
17 that has now become a nightmare back into a fairytale and find
18 Ms. Kim not guilty. Thank you. Thank you, Your Honor.

19 THE COURT: Thank you.

20 Ms. Wick, is the government ready to call its first
21 witness?

22 MS. WICK: Yes, Your Honor. If you could give us a
23 moment, we can gather exhibits. It will make the direct more
24 smoother if we can just gather those.

25 THE COURT: Okay.

1 While the government does that, does anyone on the
2 jury need a break for a minute? Are you all okay?

3 (Jurors nodding affirmatively.)

4 THE COURT: Why don't you get that monitor turned
5 back around, please, before you all begin your examination.

6 MS. WICK: Your Honor, we have one witness
7 coordinator, and I think who's in a trial with sixty
8 witnesses. So if you could give us a minute to go get them.

9 THE COURT: Ms. Wick, I think Ms. Murnahan needs
10 you.

11 MS. WICK: Your Honor, the government calls Patrick
12 Byrnes.

13 THE COURTROOM DEPUTY: Could I get you to stand,
14 please, and raise your right hand.

15 Do you swear or affirm to tell the truth, the whole
16 truth, and nothing but the truth so help you God?

17 THE WITNESS: Yes, I do.

18 THE COURTROOM DEPUTY: Thank you. Please be seated.
19 Will you state your first and last name.

20 THE WITNESS: My name is Patrick. Last name is
21 Byrnes, B-y-r-n-e-s.

22 THE COURTROOM DEPUTY: Thank you.

23 DIRECT EXAMINATION

24 BY MS. WICK:

25 Q Mr. Byrnes, could you tell the Court where you are

1 currently employed.

2 A I am currently employed by Nissan North America.

3 Q Can you just tell us a little bit briefly about your
4 educational background.

5 A I have a bachelor of science degree from the State
6 University of New York at Brockport.

7 Q Did you do any post-graduate work?

8 A No.

9 Q I think you said you currently work for Nissan North
10 America. What is your experience in that car sales industry?

11 A I have been in the automotive/transportation business for
12 21 years.

13 Q That's a long time, so can you give us kind of maybe your
14 most recent work history?

15 A Yes, I have been with Nissan North America beginning in
16 December of 2008.

17 Q What did you do when you started in 2008?

18 A Initially, when I started with Nissan, I was the regional
19 commercial operations manager. I was responsible for
20 establishing their Nissan commercial vehicle dealer network in
21 the southeast region. Basically a stock number of dealers
22 became Nissan commercial vehicle dealers.

23 Q I think a moment ago you said you currently work for
24 Nissan North America. Did you say what your current role is?

25 A Currently the dealer operations manager.

1 Q You are currently the dealer operations for what area?

2 A The district of west Atlanta.

3 Q Now, you were the dealer operations manager for a
4 different region in March 2013?

5 A Correct.

6 Q What region was that?

7 A It was the district of Birmingham. Birmingham/North
8 America.

9 Q Can you explain to the jury what your job
10 responsibilities were as the district operations manager for
11 the Birmingham area.

12 A It's actually the dealer operations manager.

13 Q Did I say district?

14 A Yes, it's common mistake. As dealer operations manager,
15 my primary responsibility is to be the primary contact between
16 Nissan, and the dealer buying that out will be responsible for
17 the district. With that being said, I helped those dealers
18 basically to increase sales. I do that by providing reports
19 on a monthly basis, showing how they fair in the state
20 compared to other dealers, and then also look at the
21 opportunities where they may be deficient in certain model
22 lines.

23 Q Was part of your job -- I'm going to call it, I think you
24 are sometimes called DOM, correct?

25 A Correct.

1 Q For ease of reference, we'll just go with D-O-M, DOM for
2 short. So as being the DOM, was part of your job
3 responsibilities, did it have anything to do with the
4 incentive program that dealerships had to hit?

5 A Yes, I would communicate all incentive programs to
6 dealers.

7 Q Would that include the objectives that they would have to
8 hit?

9 A Yes.

10 Q What is the objective?

11 A The objective is basically a number that has been set by
12 Nissan for a dealer based on their market area and based on
13 prior sales.

14 Q Did that number differ for each dealership?

15 A Yes.

16 Q Now as part of being the DOM, did you also provide
17 information on the incentive program rules?

18 A Yes.

19 Q What information did you provide?

20 A I would have provided the overview of the program that
21 was set forth by Nissan, and then we would have also provided
22 the official program rules that governs all of Nissan's
23 incentives and programs.

24 Q You mentioned that you were the DOM for north Alabama in
25 March 2013. Would that have included both the Cullman,

1 Alabama, and the Birmingham, Alabama areas?

2 A Yes.

3 Q So you were the DOM for both Serra Nissan Birmingham and
4 Serra Visser Nissan in Cullman?

5 A That is correct.

6 Q At some point in time, did you have dealings with the
7 Serra Nissan dealership?

8 A Yes.

9 Q How often did you have contact with the Serra Nissan
10 Birmingham dealership?

11 A I would provide e-mail correspondence on a daily basis.
12 There could be calls on a daily, weekly basis. And on average
13 there would be a visit on a monthly basis. One visit on a
14 monthly basis.

15 Q Who did you deal with at the Serra Nissan dealership?

16 A Randy Visser, Forest Housner, Abdul Mughal, and then
17 Gerald Shepard.

18 Q Just for the court reporter, Mr. Mughal is spelled
19 M-u-g-h-a-l.

20 A Sorry about that.

21 Q That's okay. I think you said earlier, part of your
22 responsibility as the DOM was to be the dealership's primary
23 point of contact with Nissan North America?

24 A Correct.

25 Q Were you responsible for answering any of their questions

1 about their incentive programs?

2 A Yes. Any questions that they would have would come to
3 me.

4 Q Who else could they have contacted if they had questions
5 about the incentive program?

6 A There is a contest and incentive hotline or an 800-number
7 that they could reach out to. There's also an e-mail address
8 for that contest and incentive.

9 Q Could anyone at the dealership who had questions about
10 the incentive program have contacted that hotline?

11 A Yes.

12 Q In the material that went out, the hotline for any
13 questions about the incentives, how they worked, whether they
14 were entitled to them, was there any question related to
15 incentives for that hotline?

16 A Yes.

17 Q Prior to June 2014, had anyone at Serra Nissan asked you
18 questions about any of the incentive programs or the rules?

19 A In general, I am sure there was questions that came up
20 that I answered. Specifically regarding the program period
21 February through March of 2013, no.

22 Q Was part of your job as the DOM to be familiar with each
23 and every incentive program that Nissan was running at any
24 given time?

25 A Yes, I had to have a good understanding of the programs.

1 Q Because how many incentives could Nissan be running at
2 any given time period?

3 A Numerous. Five, ten, fifteen.

4 Q Would the rules for each one be identical, or would they
5 be different?

6 A The rules would be the same.

7 Q Was there a common set of rules that applied to all of
8 them?

9 A Yes, that is considered the official program rules that
10 govern all programs, that apply to all programs that are, you
11 know, being used at that time.

12 Q I am going to ask you about those. Let me come back to
13 them. How long was the average incentive period program that
14 Nissan did?

15 A Usually a month.

16 Q Can you describe the incentive program that was in place
17 during February and March 2013?

18 A Yes. That program is what we called the dealer volume
19 bonus program. It was in place from February 12th through
20 April 1st of 2013. That corresponded with the end of the
21 fiscal year for Nissan. The fiscal year ended March 31st, and
22 the dealer volume bonus program was put in place to incentivize
23 dealers to sell as many cars as possible.

24 Q That was a really big money push at the end of year for
25 Nissan?

1 A Correct.

2 Q Had they had similar programs, similar dealer volume
3 bonuses at the end of year or at the end of Nissan's fiscal
4 year?

5 A Yes.

6 Q In previous years?

7 A Yes.

8 Q I am handing you what has been previously marked as
9 Government's Exhibit 37.

10 Mr. Byrnes, do you recognize that document?

11 A Yes, I do.

12 Q What is that?

13 A This is the official program rules. It is basically the
14 document that applies to all of the Nissan programs and
15 incentives that are in place.

16 Q Can you just take a moment and look through the records
17 that I have handed you and tell me if those are true and
18 accurate copies of official program rules.

19 A (Witness complying.) Yes.

20 Q Are those program rules created and kept in the ordinary
21 course of Nissan's business?

22 A Yes.

23 MS. WICK: Your Honor, at this time, the government
24 would move to admit Government's Exhibit 37?

25 MR. BROOME: We have no objection, Your Honor.

1 THE COURT: It's admitted.

2 MS. WICK: Your Honor, the witness is going to
3 discuss a couple of pages. May we publish those to the jury?

4 THE COURT: You may.

5 BY MS. WICK:

6 Q Mr. Byrnes, turning to Government's Exhibit 37, page 1.
7 I believe it's marked in the bottom of your corner with an
8 NNA004680?

9 A Yes.

10 Q The first three pages, pages 1, 2, and 3, what are those?

11 A Those again those are the official program rules. Those
12 are basically the master rules that apply to all the
13 incentives and programs that are in place for Nissan.

14 Q When were those rules sent to the dealerships?

15 A They would have been sent to the dealership when the
16 program was announced.

17 Q How did the dealership receive them?

18 A They would have received them via e-mail.

19 Q Were there other ways for the dealership to get it?

20 A Yes. There is a portal, it's the Nissan incentive award
21 portal, and that is on the NNA net site, which anybody at a
22 Nissan dealership either in the sales, management, or
23 administrative management would be aware to find that
24 information.

25 Q I am hoping that you can explain some of the provisions

1 in there for the jury. Let's start with number one, Roman
2 Numeral I, A-2, down where it says reporting under the
3 eligibility requirements. A little bit lower. Sorry, we're
4 dealing with technology. Just give us one second. That was
5 my mistake, I-C-2. I apologize.

6 A Okay.

7 Q (Speaking to paralegal assistant, Julie Gold.) It was
8 one 2-A under Eligibility Requirements. I apologize, Mr.
9 Byrnes. We are getting the hang of this. Okay.

10 Can you explain, under Eligibility Requirements, Roman
11 Numeral I-A-2.

12 A "Physically available at the dealer's location or in
13 dealer inventory." Basically, the vehicle to be recorded at
14 sale needs to be available at the dealership of record at the
15 time of the transaction.

16 Q So that's for a car to qualify for any incentive -- for
17 any incentive payment under these official program rules?

18 A Correct.

19 Q Can you tell me -- if we could get rid of that call
20 out.

21 Looking at the document that you have, can you tell me
22 where on there it says that a dealership has to accurately
23 report the information that's submitted to Nissan North
24 America?

25 A Under 1-C-2, Reporting. "Proper vehicle information

1 submitted in the..." what we call "the retail delivery
2 reporting system will determine eligible incentive awards.
3 Designated sales type code must be accurately reported. A \$50
4 administrative fee may per unit may be assessed on any unit
5 with an incorrect sales type code."

6 Q Okay. And so, can you explain what the retail delivery
7 reporting system is?

8 A Yes, that's the Nissan system that all Nissan dealers
9 have access to where they go ahead and report their vehicle
10 sales through that system.

11 Q It says it's called RDR. Is it commonly known as RDR or
12 RDR'ing?

13 A RDR, that's correct.

14 Q So if I am understanding this right, I'm not in the car
15 industry, but the way that Nissan North America could
16 determine what dealerships qualify -- which incentives the
17 dealership qualified for was the information submitted in the
18 RDR system?

19 A That is correct.

20 Q Mr. Byrnes, can you explain to the jury what a dealer
21 trade is.

22 A Yes. A dealer trade is where one dealer that has a
23 customer interested in a specific vehicle -- unfortunately,
24 that dealer does not have that in their inventory -- so they
25 do a basically a dealer locate, and they find a dealer within

1 their area that has that identical vehicle. They contact that
2 dealer and make arrangements, as long as both the parties
3 agree to have that vehicle dealer traded to the dealer that
4 has the customer interested in that unit.

5 Q So if I understand that when a person goes into a car
6 dealership, they want a car. That car dealership does not
7 have it, so they have to essentially buy it from another
8 dealership to sell it to the customer?

9 A That is correct.

10 Q And in the example that you just gave, if the customer
11 buys the car at a different dealership and not at that
12 dealership that they went into, is that an actual dealer
13 trade?

14 A No.

15 Q I think on the document that you had in front of you
16 there was a Section 2-G.

17 Could we call back up Government's Exhibit 37. And I
18 think it would be on page 2.

19 A Yes.

20 MS. WICK: Your Honor, just one second. I touched
21 something to -- Tammi, do you know how to get the arrows off?

22 THE COURTROOM DEPUTY: You can touch down at the
23 bottom or the top. It should tell you to clear. There we go.
24 Yes.

25 MS. WICK: Thank you. Sorry about that. There was

1 a giant label that says "clear" that I missed. Okay. We got
2 it. Okay. We got it.

3 BY MS. WICK:

4 Q So looking at the second page under Roman Numeral II,
5 Section G.

6 A Okay.

7 Q If we could call that out.

8 Can you read 2-G and explain what that means to the
9 jury.

10 A Yes. "Vehicles transferred and/or sold by one dealer
11 directly or indirectly to another dealer are not eligible for
12 the transferring dealer, but are eligible for the receiving
13 dealer, if they otherwise qualify and are subsequently sold to
14 the ultimate customer."

15 So back to my sort of initial explanation is if an
16 individual comes into dealership A and inquires about a
17 vehicle, dealership A reaches out to dealership B, they do a
18 dealer trade. Dealership A sells that vehicle to the
19 customer. Dealership A qualifies for any appropriate
20 applicable incentives, while the dealership that did the
21 actual trade would not.

22 Q I am going to replace your A and B. If a Birmingham
23 dealership does not have the car, it's at Cullman dealership,
24 customer buys the car in Cullman, Birmingham reports the car
25 sold in Birmingham, is that in any way a dealer trade?

1 A No.

2 Q Would that car reported sold in Birmingham be entitled to
3 any incentive money?

4 A No.

5 Q If I could point your attention to Section 3-A. Could
6 you read and explain that provision to the jury.

7 A "NNA's financial system will automatically reconcile
8 eligible program incentive awards based on proper vehicle
9 delivery and reporting information submitted during the sales
10 quarter. Debit/credit adjustments will appear on the
11 incentive payment for earnings statement, which is published
12 weekly. Dealer is responsible for reviewing these weekly
13 statements for accuracy and must institute any appropriate
14 corrections during the sales quarter."

15 As we talked about earlier, Nissan gathers all the
16 information through our RDR system, and through that, we
17 verify what qualifies for an incentive. And with that, on a
18 weekly basis, we send out an incentive payment for earnings
19 statement.

20 Q And let me come back to the incentive payment for
21 earnings in a moment, okay?

22 What you just read, dealer is responsible for
23 reviewing these weekly statements for accuracy and has to
24 submit corrections -- who at the dealership is usually
25 responsible for that?

1 A In most cases, it is the controller, or somebody in the
2 finance department.

3 Q And I think under Section IV, is this what you were
4 referring to earlier, you mentioned that there was like a
5 hotline that they could call if they had questions?

6 A That is correct.

7 Q Okay. And would this information have been available to
8 anyone at the dealership if there was something they were
9 confused about that they wanted to call and ask for
10 information on the incentives?

11 A Yes.

12 Q Did you ever get a call from the controller, Ms. Branch?

13 A No.

14 Q Did the official program rules discuss the Nissan audit
15 process?

16 A Yes.

17 Q Let me turn your attention to Section Roman Numeral V-A
18 on the next page, on page 3. Can you explain what that
19 section is discussing.

20 A Basically, if Nissan has the ability to come in at any
21 time and review the records of prior sales at a dealership.

22 Q When it says, "...reported units that are not in
23 accordance with these rules or policies..." would that include
24 deals that are inaccurately reported in terms of which
25 dealership they were sold at?

1 A Yes, they would.

2 Q Let me turn your attention to the next two pages -- I
3 think it's on yours, but they are labeled at the bottom NNA
4 4683 and 84.

5 A Yes.

6 Q Do you recognize those documents?

7 A I do.

8 Q And what are they?

9 A It is the dealer volume bonus program.

10 Q When you say the dealer volume bonus program, is this the
11 same rules, or are these different rules than what you just
12 read?

13 A It would be the same rules.

14 Q So the official program rules that you were just talking
15 about would apply to this specific incentive program?

16 A That is correct.

17 Q So the dealer volume bonus is one of many Nissan
18 incentive programs?

19 A Correct.

20 Q What was the incentive period for the dealer volume bonus
21 in 2013?

22 A From February 12th through April 1st.

23 Q If we could call up that at least for now. It would be
24 hard to read. Just the top part. Could we enlarge it?

25 So Mr. Byrnes, the sales start date and the sales end

1 date, what are those?

2 A That's basically the date when the program begins. So,
3 any vehicles that are reported with a sales date between
4 February 12th through April 1st would qualify for the payouts
5 laid out in this program.

6 Q So to qualify, they had to sell all the cars during those
7 days?

8 A Correct.

9 Q What is the RDR add end date?

10 A That Nissan allows a correction period. So if there are
11 any errors made in the RDR reporting, they have basically to
12 the following quarter to go ahead and correct those.

13 Q Can you explain to the jury what the FastStart program
14 was?

15 A Yes, the FastStart was a program where the dealership was
16 given an objective, basically, from February 12th through
17 February 28th. And if they hit that objective, they would
18 qualify for, basically, earnings, financial earnings per
19 vehicle sold at the end of the total program period, which
20 would be April 1st.

21 Q So, it was like a beginning bonus period?

22 A Yes, it was again, a FastStart, jump start was to
23 motivate the dealers to push sales.

24 Q Do you know if Serra Nissan hit the FastStart during the
25 incentive period in 2013?

1 A Yes, they did.

2 Q Let me turn your attention to Government's Exhibit 37,
3 page 5, the chart. I believe on the bottom of yours it's
4 marked NNA 4684.

5 A Yes.

6 Q Okay. It looks like a tiered system?

7 A That is correct.

8 Q Can you explain that?

9 A Basically, the two main tiers, you have a level one tier,
10 and then a level two tier. The level one tier, just using
11 round numbers, was a payout tier that would be established for
12 a dealership based on hitting a set objective. As an example,
13 a dealer could have been set with an objective of 75 units for
14 level one, and they would get paid out. If they hit that 75
15 units from February 12th to April 1st, they would get paid out
16 a hundred dollars per car.

17 Q In 2013, Serra Nissan hit its FastStart, so if they hit
18 level one, what amount would they get per car?

19 A They would get an additional \$200 per car.

20 Q Level one with the FastStart?

21 A Yes.

22 Q They wouldn't get the top potential payout of \$300 per
23 car?

24 A It would be a total of \$300.

25 Q Okay. So what would the total payout per car be if they

1 hit it?

2 A It would be \$300.

3 Q Now if they hit their highest incentive level, how much
4 would they make per car?

5 A \$700.

6 Q So do you know what incentive Serra Nissan ended up
7 hitting at the end of that incentive period?

8 A They hit the level two with a FastStart.

9 Q So they got the \$700 per car?

10 A Correct.

11 Q If they had not hit that -- I think under the program
12 notes underneath this -- if we could do the call up at the
13 bottom part of the page -- it says, "All payouts are
14 retroactive to unit one." Can you explain that?

15 A Yes, basically, for any units that are sold beginning
16 February 12th, if at the end of that program period, they hit
17 the level two objective, that \$700 payout would go back to the
18 first unit they sold.

19 Q So for every car between that level one and level two, as
20 soon as they hit that level two, they were making \$400 extra
21 per car for every car they sold?

22 A That is correct.

23 Q Earlier you said that part of your job as the DOM was to
24 communicate with folks at the dealership. And I think you
25 said you sent them like reports on their standing for the

1 incentives?

2 A Correct. I would send them a retro tracker that would
3 show where they stood regarding their objectives for the
4 dealer volume bonus program.

5 Q I am handing what has been previously marked as
6 Government's Exhibit 44. Can you just take a moment and
7 review those documents and tell me if you recognize them.

8 A (Witness complying.) Yes, I do.

9 Q What are those documents?

10 A These were e-mails that I had sent to Serra Nissan, as
11 well as Serra Visser Nissan, providing them an update
12 regarding where they stood for hitting their objective for the
13 program period, February 12th through April 1st in the volume
14 bonus program.

15 Q Those are retro trackers you are referring to?

16 A Correct.

17 Q And were those created in the normal course of Nissan's
18 business?

19 A Yes.

20 MS. WICK: Your Honor --

21 BY MS. WICK:

22 Q Are those true and accurate copies of the retro trackers
23 you sent in February and March of 2013?

24 A Yes.

25 MR. BROOME: We have no objection, Your Honor.

1 THE COURT: They're admitted.

2 MS. WICK: Thank you, Your Honor.

3 BY MS. WICK:

4 Q Did you do retro trackers -- I think you said those are
5 both from dealerships, Serra Nissan and Serra Visser Nissan?

6 A Yes.

7 Q Who received the retro tracker noted for the Serra Visser
8 Nissan in Cullman?

9 A Greg Boyles, Harold Yelverton, Randy Visser, and Forest
10 Housner.

11 Q Who received the retro tracker at Serra Nissan?

12 A Randy Visser, Forest Housner, Abdul Mughal, and Gerald
13 Shepard.

14 Q Looking at those retro trackers, can you tell me what did
15 Serra Visser Nissan, the Cullman dealership, have to sell to
16 hit their highest incentive level, the level two here?

17 A Their level two tier was 77 units.

18 Q So they only had -- if I'm understanding you, they only
19 have to sell 77 cars to get that level two big bonus \$700 per
20 car?

21 A Correct.

22 Q Where was, based on your retro trackers, where was Serra
23 Visser Nissan, the Cullman dealership, in terms of meeting
24 their objective as of March 19th, 2013?

25 A They had a balance to go of 19 units to report to hit

1 their level two objective.

2 Q And where were they as of March 21st.

3 A March 21st, they had balance to go of 14 units to hit
4 their objective.

5 Q Where were they as of March 26th?

6 A On March 26th, they had attained their level two
7 objective.

8 Q So meaning that they had sold the 77 cars?

9 A Correct.

10 Q If they sold anymore cars over that 77, what extra bonus
11 did they get?

12 A There would be no additional bonus. They would just
13 continue accruing that \$700 per car.

14 Q Now can you tell me, what was Serra Nissan's sales
15 objective to hit their tier two at the Birmingham dealership?

16 A It was 172 units to hit their level two objective.

17 Q Can you explain the difference, why did Serra Nissan have
18 to sell so many more cars than Serra Visser Nissan?

19 A Based on prior sales, and based on primary market area
20 opportunity. Birmingham Serra Nissan being in Birmingham, so
21 larger population, more opportunity.

22 Q So those individual numbers, the 77 versus the 172
23 mattered to Nissan?

24 A Yes.

25 Q Looking at your retro trackers, can you tell me where

1 Serra Nissan, the Birmingham dealership, was in terms of
2 meeting their objective as of March 19th, 2013?

3 A Yes, they had a balance to go of 65 units to report to
4 hit their level two objective.

5 Q Where were they on March 21st?

6 A March 21st, they had a balance to go of 61 units.

7 Q What about on the 26th?

8 A The 26th, they had balance to go of 42 units.

9 Q So, five days -- I think, roughly, five days away from
10 the end of the incentive period, they still needed to punch,
11 or excuse me, submit 42 cars in order to qualify for the
12 incentive?

13 A That is correct.

14 Q At 42, though, what would they have received in the
15 incentive if they were 42 away at the end of the incentive
16 period?

17 A Then would have received zero dollars.

18 Q So they wouldn't have gotten any incentives at all if
19 that was where they had ended?

20 A Correct.

21 Q How did you know if Serra Nissan hit its objectives?

22 A I would have been provided with a report from Nissan.

23 Q They would send you something?

24 A A pure corrected update where they stood and where the
25 dealership stood regarding the dealer volume bonus.

1 Q And you would just forward that information on to the
2 dealership?

3 A Yes.

4 Q In March 2013, when the dealer volume bonus was
5 happening, did you get any additional pay if they hit the
6 highest objective?

7 A No.

8 Q When they went from 42 away, five days before the end to
9 hitting the objective, were you surprised that they had sold
10 that many in five days?

11 A No, not necessarily.

12 Q Why not?

13 A A lot of dealers have a process in place in regards to
14 how they report vehicles. Some will wait to report vehicles
15 until the last day. A lot of it is just sort of posturing in
16 the district to see who can be the big dog in the city from a
17 reporting standpoint, who sells the most vehicles.

18 Q When they were 42 away, did you have any conversations
19 with anyone at the dealership -- and I'm sorry, early I used
20 the term punch but --

21 A It's good. You are catching on.

22 Q So that's sometimes what people call when they RDR, they
23 punch a car?

24 A Yes.

25 Q So did you tell anyone at the dealership to punch rental

1 cars or RDR cars or do anything at the last minute in order
2 for them to hit their incentive?

3 A No.

4 Q Did you give them any instructions at all on what to do
5 to get that highest incentive?

6 A No.

7 Q I think earlier we were talking about the retail delivery
8 report or the RDR, in terms of that means that Nissan has to
9 know if a car was sold. Can you tell the jury what,
10 specifically, is submitted in that retail delivery report to
11 Nissan?

12 A Yes. In the RDR system, the information collected there
13 is one, the actual sales date, the sales type, whether it is a
14 leased vehicle or it's just a flat retail sale, or if there's
15 any finance involved from our finance company, Nissan Motor
16 Acceptance.

17 Q What other information?

18 A The most important would be the customer information,
19 along with their address information.

20 Q Would it also include information about who sold the
21 vehicle?

22 A Correct. The dealer that reports the vehicle would show
23 as the dealer of record when it came to the actual sales.

24 Q Would it also include which dealership, if there was more
25 than one dealership -- would it also include which dealership

1 the vehicle was actually sold at?

2 A Yes, it would.

3 Q Let me go through each of those. You said a moment ago,
4 importantly, why was it important the customer's name and
5 address? Why is it that information important to Nissan?

6 A Well, first off, if there's any recalls on a vehicle,
7 Nissan needs to be able to notify the customers. The second
8 thing is it also comes into play regarding incentives.
9 Customers that live in New York, as an example, they may
10 qualify for different incentives than somebody that lives in
11 the state of Alabama.

12 Q You also said the date of transaction. Why would the
13 date of transaction be important to Nissan?

14 A Because all of our programs and incentives have a start
15 date and an end date. So that date that the sale actually
16 takes place is going to trigger what incentive that vehicle
17 qualified for.

18 Q You said the type of sale, whether it was leased or
19 retail or financed, why would Nissan need that information to
20 be accurate?

21 A Because again, we would have different incentives that
22 would be in place for a leased vehicle versus a retail sale
23 versus a sale that was financed through our finance company.

24 Q You said it would also include the individuals who sold
25 the vehicle. Would that affect the incentive that Nissan

1 paid?

2 A It wouldn't impact the incentives for the vehicle. But
3 Nissan does have incentive programs for sales consultants. So
4 we keep track of each vehicle sold who the sales consultant
5 was.

6 Q You also said that which dealership it was sold at would
7 be included. Why would that information matter to Nissan?

8 A Because again, at the end, that shows Nissan where the
9 incentives are to be paid and who earned the incentives.

10 Q If Nissan wanted Cullman to sell 77 and Birmingham to
11 sell 172, why did it matter to Nissan North America which
12 dealership the vehicle was sold at?

13 A Because Nissan -- again, these are incentive programs,
14 and Nissan puts out a large amount of money to incentivize the
15 dealers. And depending on where the vehicles are reported,
16 there is basically a large sum of money that Nissan can be
17 impacted based on where the vehicles are reported sold.

18 Q In this situation, if the Birmingham store had -- when
19 Cullman hit its 77, it was only getting \$700 per car -- if the
20 Birmingham store had started taking the Cullman deals and just
21 reporting them as sold at the Birmingham store, why would that
22 be problematic to Nissan?

23 A Our financial exposure would be greatedened. And as an
24 example, what I said before is if Serra hadn't qualified --
25 didn't get those extra 15 units, or whatever it is, we would

1 not have had to pay out. Nissan would not have had to pay out
2 any reward to the dealership.

3 Q So a minute ago when you said your exposure would be
4 greatedened. Can I maybe simplify that that you would have had
5 to pay money that you would otherwise have not had to pay?

6 A Correct.

7 Q Is there a name for that practice if two dealerships kind
8 of exchanged sales that way?

9 A Yes. It's called pooling of sales.

10 Q Is it an acceptable practice to Nissan?

11 A It is not.

12 Q How would somebody at a dealership know that pooling of
13 sales is an unacceptable practice to Nissan?

14 A It is common knowledge throughout the automobile
15 business.

16 Q In addition to the program rules that we went over with
17 all of the language, you are saying it was common knowledge?

18 A Correct.

19 Q I am handing you what has been previously marked as
20 Government's Exhibit 29. Please just take a moment and look
21 at that, and tell me if you recognize that document.

22 A (Witness complying.) Yes.

23 Q What are those documents?

24 A These are screen shots that show per vehicle what each
25 unit earned on an incentive basis. It's what we call our vin

1 system. It's the vehicle incentive management system. It
2 provides a summary of what each reported vehicle earned from
3 an incentive base.

4 Q Taking a look at those, can you tell me if those are true
5 and accurate copies of the vin screen shots with the 15
6 vehicles at issue in this case?

7 A Yes.

8 MS. WICK: Your Honor, at this time, the government
9 would move to admit Government's Exhibit 29.

10 MR. BROOME: We have no objection.

11 THE COURT: It's admitted.

12 MS. WICK: Okay.

13 BY MS. WICK:

14 Q If we could just -- we're not going to do all 15, but if
15 you could blow up, as an example, if you could pull up page 1
16 of Government's Exhibit 29.

17 If we could publish, Your Honor?

18 THE COURT: Yes.

19 BY MS. WICK:

20 Q Mr. Byrnes, who at the car dealership would have access
21 to the vin system you are talking about?

22 A The executive management, which would be the executive
23 manager, general manager, and then usually the controller.

24 Q I think you said that earlier that it was -- what is the
25 actual purpose of the vin system?

1 A It allows the dealership to go ahead and reconcile each
2 vehicle that's sold to determine the actual amount of
3 incentive dollars that they receive.

4 Q You said reconciling, can you explain what you mean by
5 that, what process?

6 A Yes. When Nissan pays out the earnings, it's sort of
7 just a batch or lump sum. So when the payment is received,
8 the dealership can go through and reconcile X number of
9 vehicles that were sold in that period of time to verify that
10 the lump sum that they have received from Nissan added up to
11 the numbers that were reconciled through the vin system for
12 the number of vehicles that they sold.

13 Q So if I am understanding you, for whatever period of
14 time -- let's say two weeks, and I don't know if you know the
15 period of time -- whatever the period of time was between
16 those batch, direct deposits of lump sums, every car that the
17 dealership sold, every incentive would be included in that?

18 A Yes.

19 Q And each of those cars, I am looking just at the one in
20 front of me, it's NNA 2170. How many different incentives
21 were on this one vehicle?

22 A Three.

23 Q How can you tell that?

24 A I can tell based on the program ID on left-hand column.
25 The first one that shows RKZ, which is actually the first,

1 second, and third that refers directly to the dealer volume
2 bonus program.

3 Q Okay. I have terrible eyesight. Are you saying the one
4 that says RKZ is dealer volume bonus?

5 A Correct.

6 Q Do you know off the top of your head what RKK or RJS are?

7 A I do not.

8 Q How many different incentive codes were there?

9 A There can be 20 or 30.

10 Q We'll come back to those incentive codes in a moment.

11 You said there was lump sum that the dealership would
12 get. Who would be responsible for kind of understanding what
13 that lump sum was in terms of the payment for each vehicle?

14 A The controller.

15 Q Did the controller -- or did the dealership get an
16 explanation with that lump sum? Like, hey, this \$150,000 is
17 for those ten cars?

18 A No.

19 Q So what would the only way a controller have in order to
20 understand what that money was for?

21 A It's the vehicle incentive management system.

22 Q Thank you. I am handing you what has been previously
23 marked as Government's Exhibit 28. Can you take a look at
24 that document and tell me if you can identify it.

25 A (Witness complying.) Yes. It is a sheet that has the

1 IDs that were valid during that program period of February
2 12th, 2013, through March or April 1st of 2013.

3 Q Can you looking at that tell the jury if that's a true
4 and accurate copy of the list of the incentive codes?

5 A Yes.

6 MS. WICK: Your Honor, at this time, the government
7 would move to admit Government's Exhibit 28?

8 MR. BROOME: We have no objection, Your Honor.

9 THE COURT: It's admitted.

10 MS. WICK: May we publish Government's Exhibit 28,
11 Your Honor?

12 THE COURT: Yes.

13 BY MS. WICK:

14 Q If we could just call out just a couple at the top. When
15 you, a moment ago, were looking at the vin screen shots --

16 A Yes.

17 Q -- and you were talking about the program IDs on the
18 left side --

19 A Correct.

20 Q -- so this would be a list of those program IDs and which
21 incentive program it corresponds to?

22 A Yes.

23 Q So if somebody was looking at those vin screen shots and
24 wanted to know what incentives were on this one vehicle, they
25 would have to kind of cross reference it with this?

1 A That is correct.

2 Q At some point in June 2014, did you have discussions with
3 anyone at Serra Nissan regarding the incentive program?

4 A I did.

5 Q Who did you have those conversations with?

6 A It was Mr. Randy Visser.

7 Q Did you ever have conversations with anyone else at Serra
8 Nissan about incentives prior to that?

9 A No, not regarding this particular incentive.

10 Q Did anyone at Serra Nissan have questions from the past
11 about whether they could do something under the dealer volume
12 program?

13 A No.

14 Q Now did you contact Mr. Visser, or did he contact you?

15 A He contacted me. I believe it was on the 18th of June.
16 He had sent me an e-mail. And at that time, he had stated
17 that there were 15 RDR's that were incorrectly reported in the
18 name of Serra Nissan, and they should have been reported in
19 the name of Serra Visser Nissan.

20 Q Okay. I'm handing you what has been previously marked as
21 Government's Exhibit 22. Can you take a look at that document
22 and tell me if you recognize it.

23 A I do.

24 Q What is that?

25 A This is a dealer contact report.

1 Q What is a dealer contact report?

2 A Whenever you have any meetings or anything of importance
3 that is discussed with the dealer, I will go ahead as a dealer
4 operations manager and make note of that in our dealer 360
5 system which acts as a dealer contact report.

6 Q So were those documents kept and maintained in the
7 regular course of Nissan's business?

8 A Yes.

9 Q Is that a true and accurate copy of your June 2014
10 contact report?

11 A Yes, it is.

12 MS. WICK: Your Honor, at this time, the government
13 would move to admit Government's Exhibit 22.

14 MR. BROOME: We have no objection.

15 THE COURT: It's admitted.

16 BY MS. WICK:

17 Q If we could publish -- what page is the e-mail that you
18 were referring to?

19 A 829, or actually it was actually 830.

20 Q So page 4 of the exhibit. If we could call up the bottom
21 half.

22 A moment ago, you said that Mr. Visser e-mailed you in
23 June 2014. Is this the e-mail that you are referring to?

24 A Yes, it is.

25 Q Can you read it to the jury?

1 A "Patrick -- I need to inform you of a situation that
2 relates to the quarter bonus that ended in March 31st, 2013.
3 Serra Visser is over their objective and Serra Nissan was
4 under and there were, we believe, there were up to 15 deals
5 that were sold in Cullman but RDR'd at Serra Nissan. Cars
6 were actually sold, but the selling dealer was incorrect on
7 the RDR. What do you suggest I do in this situation?"

8 Q Did you know of anything that had happened the day before
9 on June 17th, 2014?

10 A No.

11 Q Did he call you prior to sending you that e-mail?

12 A No.

13 Q Did you respond to his e-mail?

14 A I did.

15 Q How did you respond?

16 A I responded with a phone call, I believe, on the 19th or
17 20th.

18 Q Like a day or two after his e-mail?

19 A Correct.

20 Q What did you tell him during that phone call?

21 A I told him that the proper way to correct these would be
22 to unwind the report themselves from Serra Nissan and then
23 report them correctly in Serra Visser Nissan's name.

24 Q When you say unwind, not to get -- it's undoing it, just
25 backing them out?

1 A Correct.

2 Q Did you know at the time if the dealership actually had
3 the ability to unwind the sales?

4 A I did not.

5 Q What did Mr. Visser tell you in regards to deals on the
6 phone that day?

7 A I believe he said that it was done accidentally.

8 Q What happened after the phone call that you had, I think
9 you said a day or two to like the 19th or 20th, you said, what
10 happened after that?

11 A On the 21st, which was a Saturday, I received a text
12 message from Mr. Visser.

13 Q Can you look at page 5 of the government's exhibit and
14 tell me if that's a text that you are referring to?

15 A That is the text.

16 Q Can we call up page 5 of 22. At the top it says Randy.
17 Who is that?

18 A That is Mr. Randy Visser.

19 Q What did he text you?

20 A He said, "Do you think Nissan has a problem with leaving
21 their deals as they are since they were truly sold retail and
22 the two stores total objective was actually hit? Did you
23 consider it to be an issue? Is just leaving the deals as
24 reported okay?"

25 Q What did you understand him to be asking you in that

1 text?

2 A He was asking for confirmation from me to say it was
3 okay.

4 Q Did you respond to his text?

5 A Yes.

6 Q How?

7 A Via e-mail.

8 Q When?

9 A On Monday the 23rd.

10 Q Take a look at the third page of Government's Exhibit 22
11 and tell me if that's the e-mail response.

12 A That is the correct e-mail response, yes.

13 Q Let's just take it at the top paragraph at a time. If
14 you could just read maybe like the top, going up to example.
15 We'll do the call-outs at a time --

16 A Okay.

17 Q -- so that the jury can actually see it.

18 A Okay. "Randy, Just following up on a conversation we had
19 last week regarding the e-mail you sent below, as well as the
20 text you had sent on Saturday. Even though reported vehicles
21 were actually sold retail units and the two stores (Serra
22 Nissan and Serra Visser Nissan) total combined objective for
23 March '13 was hit, the occurrence outlined would be considered
24 'pooling of sales'. This is a practice that Nissan does not
25 allow. Nissan's financial obligation regarding bonus payouts

1 can be affected considerably to 'pooling of sales'."

2 Q You gave him an actual mathematical example underneath
3 that, right?

4 A Correct.

5 Q Let me see if we can call that out in some kind of
6 effective way.

7 So what were you trying to explain here?

8 A The magnitude of Nissan's financial exposure.

9 Q Can you just maybe try to summarize what you did here?

10 A Yes, I provided two examples. One was an example of
11 pooling sales where I showed where Serra Visser Nissan and
12 Serra Nissan, what their objectives were. Again, these were
13 just truly examples. I showed the number of units that they
14 had reported, what the payouts would be per vehicle, and what
15 the total payouts would be for each dealership. As an
16 example, I showed that Serra Visser Nissan would have received
17 \$24,000, while Serra Nissan would have been received \$40,000.

18 Q So basically, in the pooling of sales scenario, if the
19 two dealerships shift around the sales, then one is going to
20 get the huge dealer volume bonus that -- but for those who
21 wouldn't have otherwise qualified for it?

22 A That is correct. And Nissan in their exposure, this
23 example Nissan's total payout would have been \$64,000.

24 Q So you were about 15, but you were talking earlier about
25 172 cars that were required, which is \$700 per car. This is

1 huge exposure for Nissan?

2 A Yes.

3 Q So in the e-mail earlier, you said you told him to unwind
4 the deals. You also told him that the correct way to undo
5 this would be to unwind them?

6 A Correct.

7 Q When you say subject to being charged back, what did you
8 mean by that?

9 A That any money that they had previously earned, Nissan
10 would charge them back that amount of money that they had
11 earned under the dealer volume bonus program.

12 Q So if they pooled sales and it was discovered, that money
13 would be taken back by Nissan?

14 A Correct.

15 Q And let me just go back. You said Serra Nissan 2000,
16 Serra Nissan 5335. What is that 2000 and 5335 number?

17 A Those are the dealer codes.

18 Q So any time you saw that on paperwork, that would
19 represent the Birmingham dealership versus the Cullman
20 dealership?

21 A Correct.

22 Q Right underneath the math example, there was a sentence
23 that says, "note." Can you read that?

24 A "Note: The figures above are used purely examples do not
25 reflect the actual objectives or payouts for March 13th."

1 Q So your \$64,000, \$30,000 number, do they in any way
2 reflect what the actual ramifications were of the dealer
3 volume bonus in '13?

4 A Not at all.

5 Q That was just numbers you had?

6 A Correct.

7 Q Did you have any conversations with anyone at the
8 dealership, either Birmingham or Cullman, about it being okay
9 to lie in the RDR?

10 A No.

11 Q Did you ever tell anyone at Serra Nissan or at the
12 Cullman dealership, that just punching cars to hit incentive
13 was okay regardless of whether it was true or not?

14 A No.

15 MS. WICK: Just one moment, Your Honor.

16 No further questions for this witness, Your Honor.

17 THE COURT: All right.

18 Why don't we take a ten-minute break. We'll get
19 started with cross examination.

20 (Recess at 3:49 p.m., until 3:54 p.m.)

21 (In open court. Jury present.)

22 CROSS EXAMINATION

23 BY MR. BROOME:

24 Q Good afternoon, Mr. Byrnes.

25 A Good afternoon.

1 Q I appreciate you coming. I tried to write down some of
2 the things that you said, and I got messed up right from the
3 beginning.

4 One of the first questions that Ms. Wick asked you was
5 who you generally dealt with at Serra Nissan in Birmingham.
6 Do you mind telling me those folks again.

7 A The primary folks at Serra Nissan that I dealt with were
8 Randy Visser and Forest Housner.

9 Q I think before you said a Gerald Shepard?

10 A Two sales managers, Gerald and Abdul.

11 Q Mr. Mughal or whatever his name was?

12 A You can hack it up.

13 Q I can't pronounce it either. But you didn't mention Kim
14 Branch?

15 A That is correct.

16 Q You didn't deal with Kim Branch?

17 A No.

18 Q You ever met Kim Branch before?

19 A I had met her in December of '13 at the grand opening of
20 Serra Visser Nissan in Cullman for their new dealership.

21 Q Did y'all take a lot that day?

22 A I think just pleasantries, hello, how are you doing, nice
23 to meet you. Nice meeting a new face.

24 Q You gave us some information about what controllers
25 generally do; is that right?

1 A Correct.

2 Q Do you know specifically what the controller does at
3 Serra Nissan?

4 A I do not.

5 Q Do you know specifically what the controller would do at
6 Serra Visser Nissan?

7 A I do not.

8 Q So you really don't know what Kim's job description or
9 duties were, do you?

10 A That is correct.

11 Q I have looked at Government's Exhibit 37.

12 MR. BROOME: Judge, may I approach?

13 THE COURT: Yes.

14 BY MR. BROOME:

15 Q I believe that's the official program rules for the
16 program we're talking about?

17 A Correct.

18 Q And I tell you, I read it three or four times. Anywhere
19 in those one, two, three -- it's just actually three pages of
20 rules, isn't it?

21 A Yes.

22 Q Anywhere in those three pages of rules, does it say no
23 pooling of sales?

24 A It does not.

25 Q Well, if I am a lawyer and I tell you I am a lawyer, and

1 I read through these three pages, how would I know it's
2 against your rules not to pool sales, if I just read these
3 three pages?

4 A You would not.

5 Q Also, in those rules, do your rules kind of presuppose or
6 assume that mistakes are going to be made in reporting RDR?

7 A Yes, I believe it states that any errors, there's an
8 opportunity to go ahead and fix those.

9 Q If we looked on page 1, number two on reporting, the
10 third sentence, what does that say? Starting with "A \$50..."?

11 A Where were we? Okay. Two. Okay. "Proper vehicle
12 delivery information submitted in the..."

13 Q No, I am sorry, it would be "I. Eligibility
14 Requirements," and under that, there's "A, B, C," and then
15 there's a "2. Reporting".

16 A Yes.

17 Q The third full side over there?

18 A "A \$50 administrative fee per unit may be assessed on any
19 unit reported within an incorrect sales type code."

20 Q So if I made a mistake RDR'ing of cars, I would just pay
21 a \$50 administrative fee?

22 A Yes. When you make the correction, then Nissan will go
23 ahead and catch where that correction has been made and you
24 will be billed back \$50.

25 Q That's it, right? I just pay you \$50 per mistake?

1 A Correct. Now, if there's any corresponding --

2 Q Just answer my question.

3 A Yes.

4 Q That was it, right? That's what your rules say?

5 A Yes.

6 Q Do you recall having any conversations either by text,
7 e-mail, or telephone with Randy Visser about making some
8 mistakes about RDR'ing some Cullman sales in for Birmingham?
9 Do you remember talking to him?

10 A Yes.

11 Q I think there was an e-mail where he e-mails you. Did
12 you text or e-mail him back?

13 A Initially, after his first e-mail, there was a phone
14 conversation.

15 Q During that phone conversation -- I tell you, I have seen
16 some things that he said. During any of those phone
17 conversations, did you tell him something like, just let
18 sleeping dogs lie or something like that?

19 A I don't recall using that exact terminology.

20 Q Well, what would you have said?

21 A I would have said that the proper way to go ahead and fix
22 the errors is to unwind the units, then re-report them in the
23 correct dealership's name. Or if you do nothing in the Nissan
24 audit system, that would be likely to be caught, and you would
25 be charged back any financial gains that you earned based on

1 those reported vehicles.

2 Q And at some point in time, they tried to pay you guys
3 back, right?

4 A I do not know that.

5 Q Okay. But Mr. Visser did talk to you about unwinding
6 some deals?

7 A In that conversation we had, that's what I instructed him
8 to do, yes.

9 Q And I noticed in your -- let me swap with you.
10 Government's exhibit -- which one did I hand you?

11 A You handed me the 827 to 831.

12 Q No, I am sorry. It's on the front of the page?

13 A Oh, 22.

14 Q If you would look at Government's Exhibit 22, you give
15 Mr. Visser a lesson in pooling of sales, is it -- would that
16 be a fair statement?

17 A I provided an example.

18 Q And you tell him, Nissan is not going to allow this?

19 A Correct.

20 Q Is that the first time that you ever told anybody at
21 Serra Nissan that Nissan North America doesn't allow this?

22 A Yes.

23 Q This nice lady back here, Kim, did you ever tell her to
24 this day that Nissan doesn't allow that?

25 A I haven't had a conversation with her regarding this.

1 Q Thank you. You also were talking about that it's not
2 unusual for dealers to kind of withhold sales to the end of
3 the month?

4 A That is correct.

5 Q And is that allowed by your rules?

6 A Yes.

7 Q But that's not being completely honest and open with when
8 they sold it, was it -- if I sold a car on the 10th of the
9 month but I didn't report it to you until the end of the
10 month, that wouldn't violate your rules, right?

11 A Correct.

12 Q But that's not breaking your rules, right?

13 A No.

14 Q That's just an acceptable practice?

15 A Yes.

16 Q Now you also talked about several things that you said
17 was common knowledge in the industry.

18 A Yes.

19 Q Since you never had any conversations with Ms. Branch,
20 you wouldn't know, what, common knowledge to Kim at all, would
21 you?

22 A No.

23 Q From your records that you have today, do you know how
24 many cars Serra Nissan in Birmingham sold during this
25 incentive program we're talking about?

1 A I do not know the end number.

2 MR. BROOME: Your Honor, I believe that's all I
3 have. Thank you, sir.

4 THE COURT: Thank you. Any follow-up from the
5 government?

6 MS. WICK: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. WICK:

9 Q Mr. Byrnes, earlier we talked about your extensive -- I
10 think you said you had been in the car dealership industry for
11 like 20-something years?

12 A 21 years.

13 Q How much of that time was spent dealing with car
14 dealerships?

15 A Seven years.

16 Q Seven years as a DOM?

17 A Two years as a DOM. Two and a half years as a DOM.

18 Q So seven years dealing with car dealerships. In the
19 seven years, how many car dealerships do you think you dealt
20 with?

21 A 60, 70.

22 Q Out of those 60 or 70, how many of them did you have a
23 working knowledge of what their controller did for their
24 dealership?

25 A Pretty much all of them had working knowledge.

1 Q So is it fair to say based on their extensive experience,
2 you have a pretty good idea of what generally controllers did
3 for their dealerships?

4 A Yes.

5 Q In terms of size, where is Serra Nissan in terms of the
6 size of the dealership that you generally deal with, small
7 medium, or large?

8 A Medium.

9 Q When you were talking about the roles and
10 responsibilities of a controller, was that based on your
11 extensive experience with the lot of medium-sized dealerships
12 that are comparable to Serra Nissan?

13 A Yes.

14 Q The 50-dollar fee that Mr. Broome mentioned under the
15 reporting, where it said, "a 50-dollar administrative fee per
16 unit need to be assessed on any unit reported with an
17 incorrect sales type code" --

18 A Yes.

19 Q -- that assumes an accident, not intentional fraud,
20 right?

21 A Correct.

22 MR. BROOME: I will object to that unless he is a
23 lawyer that wrote the rules.

24 MS. WICK: I can --

25 THE COURT: Why don't you rephrase your question.

1 BY MS. WICK:

2 Q Mr. Byrnes, what situation does that 50-dollar
3 administrative fee per unit envision?

4 A An accident.

5 Q Do you actually know as the DOM what the ramification is
6 for a dealership that intentionally submits false information
7 for Nissan North America?

8 A I do not.

9 Q Earlier when Mr. Broome asked you about that 50-dollar
10 fee, you started to say that there was some corresponding, and
11 then you were cut off. What were you going to say?

12 A Then there would be a corresponding audit, depending on
13 the actual sales type or the error that was made. If the
14 error was made in favor of the dealership, then they would be
15 charged back.

16 Q So in addition to that 50-dollar fee, if it was in fact
17 wrong, the entire incentive would be charged back?

18 A Any applicable incentives that did not count would be
19 charged back.

20 Q Earlier when you were talking about vin system, my
21 understanding is you said that was what a controller would use
22 to kind of reconcile the massive lump sum payments that they
23 would get.

24 A Yes.

25 Q Do you know if there was an instruction manual for

1 controllers on how to like, line by line, use the vin system
2 in order to reconcile their accounting books?

3 A I do not.

4 Q Do you know how people like Ms. Branch, as controller,
5 figured out how to use the vin system without a manual
6 explicitly telling them, line by line, how to do their jobs?

7 A I do not.

8 Q Did you ever have -- I think you said you met Ms. Branch
9 once at that Visser or the Cullman store opening?

10 A Yes.

11 Q Did you ever have any conversations with her other than
12 that at that party?

13 A I don't recall. I do remember on a monthly basis, I
14 would provide her with basically RDR reports for what both
15 Serra Nissan, as well as Serra Visser Nissan had sold the
16 prior month, so she could go ahead and reconcile what they
17 showed as being sold for those months.

18 Q Those were sent directly to Ms. Branch?

19 A Correct.

20 Q Did she ever call you with questions about not
21 understanding what she was supposed to do with those?

22 A I don't recall.

23 MS. WICK: No further questions, Your Honor.

24 THE COURT: Anything else, Mr. Broome?

25 MR. BROOME: Judge, just one, Your Honor.

RECROSS EXAMINATION

BY MR. BROOME:

Q Have you ever heard of the CMO?

A CMO?

Q Yes, sir.

A I don't recall.

Q Have you ever heard of continuous marketing operation?

A No.

Q Are there not some older Nissan dealerships -- and I mean older that have contracts, franchise agreements from many, many years ago that have three or four different -- own three or four different Nissan dealerships in different areas that are able to pool their car sales to meet their incentives?

A I am not aware of that.

Q It could be, though, couldn't it? You are just not aware of it?

A I am not aware.

Q Okay.

MR. BROOME: That's all I have. Thank you.

THE COURT: All right. Mr. Byrnes, you are excused.

Thank you.

THE WITNESS: Thank you.

MS. WICK: Your Honor, at this time, the government would call Jeff Creecy.

THE COURT: Thank you.

1 THE COURTROOM DEPUTY: Will you remain standing,
2 please, and raise your right hand.

3 Do you swear or affirm to tell the truth, the whole
4 truth, but nothing but the truth so help you God?

5 THE WITNESS: I do.

6 THE COURTROOM DEPUTY: Thank you. Please be seated.
7 Will you state first and last name.

8 THE WITNESS: Jeffrey Creecy.

9 THE COURTROOM DEPUTY: Will you spell your last
10 name.

11 THE WITNESS: C-r-e-e-c-y.

12 THE COURTROOM DEPUTY: Thank you.

13 DIRECT EXAMINATION

14 BY MS. WICK:

15 Q Mr. Creecy, you may be a little too soft-spoken. Can you
16 pull that microphone a little closer to you so the jury can
17 hear you.

18 A Is that better?

19 Q Okay. Yes. Thank you so much.

20 Could you tell the jury what your current position is.

21 A I am currently a senior field auditor in the business of
22 auto sales department for Nissan North America.

23 Q Can you tell me a little bit about your educational
24 background.

25 A I have a bachelor's of business administration from the

1 University of Texas at Arlington.

2 Q Did that have any accounting aspect to it?

3 A It was specializing in accounting.

4 Q What kind of experience do you have in the car industry?

5 A I have worked for Nissan North America for 11 years, as
6 well as Nissan Motor Acceptance Corporation for 13 years prior
7 to that.

8 Q How long have you been an auditor at Nissan North
9 America?

10 A My whole 11 years.

11 Q The whole 11 years was an auditor?

12 A Yes.

13 Q As an auditor, are you covering regions, or are you
14 assigned to specific car dealerships?

15 A I am primarily assigned to a specific region with the
16 ability to travel as work load or as needed.

17 Q What is your current region?

18 A I am currently assigned to the central region.

19 Q And what is that?

20 A Primarily, Texas, Louisiana, Arkansas, all the states
21 from Texas north up to North Dakota, as well as Mississippi
22 and small parts of Missouri and Iowa.

23 Q What was your region in 2013?

24 A It was the same.

25 Q The same? Who actually covered the state of Alabama in

1 2013, do you know?

2 A The primary auditor was Richard Frieser.

3 Q Did you sometimes assist him at times if he couldn't
4 cover an audit?

5 A If he couldn't cover an audit or if my workload was too
6 small and I needed to pick up audits to augment my workload,
7 yes.

8 Q Before we talk about this specific dealership, can you
9 explain the audit process generally. Just walk me through
10 like -- start with how does Nissan North America decide to do
11 an audit.

12 A Twice yearly we conduct what's called a risk based
13 analysis or what we refer to as RBA where we analyze risk
14 factors for our dealer body to determine who would be in a
15 higher risk of misreporting to look into scheduling an audit.

16 Q What is that risk based analysis based on?

17 A Analyzing data, such as registration date that we were
18 able to obtain, previous history in previous sales audits,
19 information related to possible exports, information related
20 to numerous back outs, things like that.

21 Q When you say back outs, what does that mean?

22 A Meaning when you report a car as being sold, you back it
23 out if the sale doesn't go through, or if it was incorrectly
24 reported as to the wrong customer.

25 Q Is a back out the same as unwinding a deal?

1 A Yes.

2 Q Is your risk based analysis, is it in any way based on
3 the RDR information the dealership submits to Nissan North
4 America?

5 A Yes.

6 Q In what way?

7 A There is a comparison aspect to the analysis comparing
8 the registration data that we are able to obtain to what the
9 dealer report as being sold.

10 Q A minute ago, I think you said that it's also based on
11 past audit history?

12 A Yes.

13 Q What is a high risk dealership?

14 A A high risk dealership would be somebody who within each
15 category scores a larger scoring in comparison to other
16 dealerships.

17 Q So high risk meaning kind of more likely to not be doing
18 it correctly; is that fair?

19 A That would be fair, yes.

20 Q How often do most dealerships get audited?

21 A It can vary by state, depending on state statutes. There
22 can be a likelihood of being audited more frequently. As far
23 as an average number. I don't really know for sure what the
24 exact number would be.

25 Q You said it could be limited by statute. Do you know in

1 2013 if the audit period was limited by statute in Alabama?

2 A Yes.

3 Q To what?

4 A 12 months.

5 Q Do you know from like what date?

6 A I believe it was the most recent sales quarter.

7 Q The most recent?

8 A Sales quarter from that point.

9 Q From what point?

10 A The point we were beginning the audit process.

11 Q Okay. So it's one year from something?

12 A Yes.

13 Q Was Serra Nissan a high risk dealership in 2013?

14 A They were on their list to be audited, so I would say
15 they would be, yes.

16 Q You said earlier that there was a comparison aspect.

17 What kind of red flags are you looking for when you are doing
18 your comparison analysis?

19 A Misreported sale dates, customers in the RDR not matching
20 what's on our registration information, or the information we
21 have available, incorrect addresses, possibility of being
22 flagged as exports. Those sorts of things.

23 Q When you say exports, you mean a car that's bought but is
24 being shipped out of the country?

25 A Correct.

1 Q You also said that there was a one-year limit on the
2 audit period. What happened if you didn't catch something
3 until more than a year after that audit period? What would
4 happen if you found something one year outside of that one
5 year audit period?

6 A We wouldn't look at anything else on the audit.

7 Q So you wouldn't even look at it?

8 A No.

9 Q Using the -- I think you said the risk-based analysis, is
10 that how you would pick audit candidates?

11 A Correct.

12 Q What would happen after you kind of came up with your
13 dealerships on the audit list?

14 A Once they have conducted the RBA, risk-based analysis,
15 then they will notify the region of their intention to audit
16 selected candidates within the region. I mean, the regional
17 offices.

18 Q Is that somebody inside Nissan North America?

19 A That would be the -- yes, the regional vice president and
20 the area general manager for that region.

21 Q So this is still all internal processes at this point?

22 A Correct.

23 Q When do you kind of notify the dealership that they're
24 going to be audited?

25 A Once we have them scheduled for a particular month.

1 Q How did you notify them?

2 A A letter is sent out by our management in the audit
3 department.

4 Q What's the purpose of that letter?

5 A To start the audit process with the actual dealer to let
6 them know we are intending to go audit them for whatever the
7 prescribed audit scope is. Also to identify the auditor being
8 assigned to conduct the audit.

9 Q What data would you need from the dealership at that
10 point when that letter goes out?

11 A After the letter goes out, we contact them to verify,
12 advise them as stated in the letter what month we intend to
13 conduct an onsite review, as well as to conduct what we call
14 preliminary or pre-review work. As part of that, we request
15 sales data from them to be obtained from their system -- their
16 dealership system, I should say.

17 Q When you say their dealership system, are you referring
18 -- is that the same as their accounting system?

19 A Yes.

20 Q Do you know what accounting system Serra Nissan was using
21 in 2013?

22 A I do not recall, no.

23 Q What kind of accounting systems have you come into
24 contact with dealing with dealerships?

25 A Primarily the ones are ADP, Reynolds and Reynolds are the

1 primary vendors. We also have others like AutoSoft,
2 Dealertrack, as well as some other smaller players.

3 Q So at some point after that letter goes out, you request
4 data from the dealership?

5 A Correct.

6 Q What data, specifically, do you request from the
7 dealership during that process?

8 A We are looking for the information showing what vehicles,
9 new vehicles they showed and sold during the audit scope, as
10 such we request they provide the vin, the data of sale, the
11 customer's name, the customer's street address, the customer's
12 city, state, and zip, any rebate amount applied to the deal,
13 the finance, the APR rate, the salesman's name, and also the
14 lienholder financed.

15 Q So like the source of financing, the lender?

16 A Correct.

17 Q Who at the dealership would send that information to you?

18 A Normally, the office manager, controller, or the
19 executive manager, depending on who chose to forward that
20 information to me.

21 Q What format would they send it to you in?

22 A Excel.

23 Q Like a spreadsheet?

24 A Yes.

25 Q Did that information come from the retail delivery report

1 like the actual RDR? What I mean by that is that could they
2 have just sent the RDR information, or was the accounting
3 information that you asked for more extensive than the RDR?

4 A The information used to report the RDR should match that,
5 so it could be similar. However, when you receive reports,
6 depending on the system, you can see where this comes from.

7 Q So I want to make sure I understand. So the RDR
8 information that they submit directly to Nissan, you have that
9 in your system?

10 A Yes.

11 Q You then ask them to manually provide the information
12 that they have in their dealership's accounting system?

13 A Yes.

14 Q In the hopes that obviously those would match?

15 A Yes.

16 Q After you receive that data, then what happens?

17 A We conduct an analysis comparing the RDR data to the data
18 received. We call it the sales data report.

19 Q The sales data report. That's the information in the
20 Excel spreadsheet?

21 A Yes.

22 Q I just want to use the same term. So the Excel
23 spreadsheet you call the sales --

24 A -- data report.

25 Q Okay. After you get the sales data report, you compare

1 it to the RDR looking for what?

2 A Discrepancies, differences, mismatched names, mismatched
3 dates, whether or not the vehicle or the RDR is showing up in
4 the data. We also conduct an analysis comparing the amount of
5 sales incentives that were paid to what was applied to the
6 deal, as well as salesman analysis for salesperson's programs
7 to determine whether or not the person sold or who sold the
8 car reported is actually the person in the RDR.

9 Q So at that point in time, you are just making sure sales
10 data report, their accounting system information matches what
11 they submitted through the RDR?

12 A Correct.

13 Q What happens next if you find discrepancies or red flags
14 in that process?

15 A At that point, we look and see what types of
16 discrepancies we've got to determine how many that we are
17 going to need to look at to review in depth. We contact the
18 dealer and let them know whether or not an onsite visit will
19 still be required because there's a large number of dealers,
20 or whether or not we will be able to conduct what we call an
21 office or mail-in audit if it's only a few discrepancies.

22 Q I am assuming an office mail-in audit is literally either
23 a deal, just send them to us and we'll look at them, and we do
24 not need to come onsite?

25 A Correct.

1 Q Assuming you do have to come onsite, I think I said you
2 reach out to the dealership. Who do you usually contact at
3 the dealership to schedule the onsite audit?

4 A The primary contact dealer or the principal or executive
5 manager.

6 Q Could it be other people at the dealership?

7 A If the executive manager is -- they do not have one, it
8 could be a general manager. If the people in charge determine
9 that such as an executive manager determines he did not want
10 to handle the audit, we'll refer it to the controller or
11 office manager. It depends on how they have it structured.

12 Q Who do you know who that contact was at Serra Nissan?

13 A Randy Visser.

14 Q He was the executive manager?

15 A Yes.

16 Q So let's assume that you find the red flags, it's more
17 than a mail-in audit, and you have to come onsite to do an
18 audit, what did that onsite process include?

19 A The onsite process included reviewing the deal jackets
20 that were requested based on the list that we determined from
21 the analysis, the sales data analysis, which we will send to
22 them prior to arriving. Once we get there, we have a brief
23 meeting with the management to discuss how long we expect it
24 to take, set up items such as who we will talk to if we have
25 questions during the process, who they plan on being able to

1 meet with at the end of the review process, as well as where
2 they have set us up to do the review.

3 Q I think a moment ago you said you asked them to pull the
4 deal jackets as part of that?

5 A Correct.

6 Q Why do you ask them to pull the deal jackets?

7 A Because the data we need to see in depth is in the deal
8 jackets.

9 Q So bear with me, you have got the RDR information that
10 the dealership submits electronically, you have got the
11 accounting information that the dealership has given you,
12 which is their internal system, and then when you come onsite,
13 you are checking the paper from the process to make sure now
14 that all three of those match?

15 A Yes.

16 Q Who did you ask to pull the deal jackets for the 2013
17 audit? Who did you contact?

18 A As I recall, I submitted an e-mail to Kim Branch and
19 copied Mr. Visser, as well as I believe the DOM at the time.

20 Q I am handing what has been previously marked as
21 Government's Exhibit 21. Do you recognize that?

22 A Yes.

23 Q What is that?

24 A This is the e-mail from me to Ms. Branch, Mr. Visser, Mr.
25 Housner and Mike James listing with the attachment for the

1 deals to be pulled.

2 Q Is that a true and accurate copy of your e-mail to Ms.
3 Branch?

4 A It does appear so, yes.

5 MS. WICK: Your Honor, at this time, the government
6 would move to admit Government's Exhibit 21.

7 MR. BROOME: We don't have any objection.

8 THE COURT: It's admitted.

9 MS. WICK: We request to publish, Your Honor?

10 THE COURT: All right.

11 BY MS. WICK:

12 Q Mr. Creecy, a moment ago you said you sent it to Kim
13 Branch, but you also copied some e-mails. Who were those
14 people?

15 A Randy Housner [sic], who was the executive manager,
16 Forest Housner, I believe his title is director of operations,
17 and Mike James, who was I believe the DOM at the time.

18 Q A moment ago you said Randy Housner, but did you mean
19 Randy Visser?

20 A Oh, I'm sorry, Forest Housner and Randy Visser.

21 Q Yeah, for some reason it shows up as Randy, but I just
22 wanted to clarify that for the record.

23 So you e-mailed Ms. Branch, Randy Visser, Forest
24 Housner, and I think you said Mike James was the DOM at the
25 time?

1 A Correct.

2 Q And then what were the attachments that are listed there?

3 A The attachments would have been the listed deal jackets
4 for the audit scope, as well as a list of deals titled NVDS.

5 Q What are those?

6 A New vehicle delivery system, which is a folder that's
7 processed with every new vehicle. Once a vehicle is what they
8 call PDI, or processed as a predelivery inspection prior to
9 being put on the lot, dealerships are required to complete
10 that checklist. All check boxes and items are required to be
11 completed as we call PDI, as well as any signature including
12 quality control. The other half is a new vehicle delivery at
13 the time of sale items that we reviewed with the customer, set
14 up for service appointment, processes, walk through the
15 vehicle, that type of stuff, as well as assign that customer
16 new incentives. All these copies, both these checklists are
17 provided to the customer.

18 Q These are very kind of detailed, almost specific
19 nit-picky things that you were asking that they needed to
20 provide to you in these deal jackets as part of the audit,
21 otherwise they would be charged back, right?

22 A More or less, yes.

23 Q Why did you send the request to pull the deal jackets to
24 Ms. Branch?

25 A Ms. Branch I believe was the person who sent me back the

1 sales data report.

2 Q So earlier in the process when you were saying the
3 accounting data that would come from the dealership's
4 accounting system, you would have sent this to the person that
5 sent you that information?

6 A Correct.

7 Q How long did you schedule for the onsite audit in 2013?

8 A I don't recall the exact length of time. I can't
9 remember.

10 Q I am asking in the e-mail, what did you tell them in
11 terms of how long you would be there?

12 A Oh, I am sorry.

13 Q That's okay.

14 A I told them I would expect to arrive midday by between
15 2:00 and 2:30 on Wednesday the 13th of March, and I expected
16 to be done by late morning on Friday the 15th.

17 Q Just out of curiosity, do you remember how many deal
18 jackets you asked them to hold for that time period?

19 A No, I don't.

20 Q What did you do during the onsite portion of that audit?

21 A Reviewed the deal jackets, took each deal jacket and
22 compared it to the RDR data we referred to as that work bench
23 off of our computer to verify the sales data report and the
24 RDR matches the deal jackets, as well as the customer report
25 and the incentives apply to each deal as compared to what was

1 paid to the dealer.

2 Q Is there any way for you to tell looking at a deal
3 jackets if it's the authentic deal jacket or a duplicate?

4 A Definitively, no.

5 Q I am going to give you a hypothetical situation. Okay.
6 Based on what you have said in your process to get the RDR,
7 get the accounting information, you come look at the deal
8 jackets? Am I straight so far?

9 A Yes.

10 Q If you came onsite during the audit and the RDR
11 information matched the accounting information and it matched
12 the deal jackets that you were provided, would you have any
13 way of determining if that information was false?

14 A Not that I know of, no.

15 Q Let's talk about the audits that you specifically did at
16 Nissan North America. Oh, no, Serra Nissan, sorry. I am
17 handing you what's been previously marked as Government's
18 Exhibit 27. Take a look at that document and tell me if you
19 recognize it.

20 A (Witness complying.) Yes.

21 Q What is that document, Mr. Creecy?

22 A This is the audit report issued at the conclusion of the
23 audit of Serra Nissan in 2010.

24 Q 2010 audit report?

25 A Yes.

1 Q Did you prepare that report?

2 A Everything but the letter.

3 Q What letter?

4 A The first three pages.

5 Q Oh, the cover letter?

6 A Correct.

7 Q Can you tell me if that's a true and accurate copy of
8 your 2010 audit report?

9 A To my knowledge, yes.

10 MS. WICK: Your Honor, at this time, the government
11 asks to admit Government's Exhibit 27?

12 MR. BROOME: Judge, the only objection I have there
13 is relevancy. This is an August 31, 2010, audit. Ms. Branch
14 didn't go to work there until December of 2013 -- 2012, excuse
15 me. So I don't know how they're trying to attribute whatever
16 mistakes, if there were mistakes made to Ms. Branch when she
17 didn't work there.

18 THE COURT: What is the relevance please, Ms. Wick?

19 MS. WICK: Yes, Your Honor. My understanding is
20 defendant's argument has been that she had no idea that these
21 were instructions from her supervisors. These were all
22 meetings that her supervisors were present at where Nissan
23 told them not to submit false information. So the relevance
24 is intrinsic to the people they worked with, co-conspirators.
25 These were meetings that they had in terms of their knowledge.

1 THE COURT: Are you trying to attribute their
2 knowledge to Ms. Branch?

3 MS. WICK: No, Your Honor, just that the people
4 that's he's about to say that were present at this audit
5 meeting were aware and were told, which are the people that
6 she is going to claim instructed her to do certain things. So
7 their knowledge of what was acceptable to Nissan North
8 America, I think, would be relevant since defense has put into
9 play that it was her superiors who instructed her to do these
10 things, and it was her superiors that were at these audit
11 meetings.

12 THE COURT: I am sorry. I am still trying to track
13 you on the relevance of this evidence.

14 MS. WICK: Yes, Your Honor. So my understanding
15 from what Mr. Broome has alluded to so far is that her claim
16 was I didn't know my supervisors told me to do these things.

17 THE COURT: Right.

18 MS. WICK: These audit reports are meetings where
19 those supervisors were present, representatives from Nissan
20 North America that told them don't do these things.

21 THE COURT: How does that have any bearing on what
22 these individuals allegedly told Ms. Branch?

23 MS. WICK: Well, I think it goes to the fact that if
24 he is claiming -- I think it goes to the fact they were aware
25 that this was wrong that they would be charged back. If he is

1 saying that the supervisors told her to do this, and they were
2 all told that it was wrong and that there were ramifications,
3 I would think that would be relevant to the likelihood that
4 they did, in fact, tell that to her or the ramifications of
5 what happened if they --

6 THE COURT: It sounds like speculation.

7 MS. WICK: Your Honor, the government would just
8 submit that it's relevant to the fact. What he is trying to
9 put in. But if Your Honor doesn't want to include the 2010,
10 there's two other audits that are relevant to the time period.

11 THE COURT: Mr. Broome, do you have an argument?

12 MR. BROOME: Judge, I just have one other thing,
13 unless I just completely misread it, Forest Housner is not
14 mentioned in this audit, as to her immediate supervisor that I
15 alluded to in opening statement.

16 THE COURT: All right. The Court sustains the
17 objection.

18 BY MS. WICK:

19 Q Let me take that from you, Mr. Creecy.

20 MS. WICK: Your Honor, just a moment. We just want
21 to sync up the dates that she was employed with audit reports
22 to avoid that issue with the next audit.

23 THE COURT: Sure.

24 MS. WICK: Thank you, Your Honor.

25 BY MS. WICK:

1 Q Mr. Creecy, I am handing you what has been previously
2 marked as Government's Exhibit 25. Can you take a look and
3 tell me if you recognize that document?

4 A Yes.

5 Q What is that document?

6 A This is the final audit report for the audit I conducted
7 in 2013.

8 Q Okay. My understanding, without admitting the audit
9 reports, this was the third year in a row that Serra Nissan
10 had been audited?

11 A That sounds correct, yes.

12 Q This is your audit report for, I know it's dated April 1,
13 2013, but what was the period that you audited?

14 A The audit scope was January 4th of 2012 through January
15 2nd of 2013.

16 MS. WICK: Your Honor, at this time we would move to
17 admit Government's Exhibit No. 25.

18 MR. BROOME: Judge, again, she did not go to work
19 there until November of 2012. So I don't know how you could
20 separate part of this audit from part of it, but I don't have
21 any objection to this.

22 THE COURT: All right. It's admitted.

23 BY MS. WICK:

24 Q Mr. Creecy, can you describe the results of your audit
25 from the January 4, 2012 to January 2nd, 2013 audit period?

1 A The results would be that after reviewing 1,204 total
2 vins, there were 17 adjusted errors of which there were 14
3 incorrect customers, two incorrect sales dates, and one
4 incorrect sale type resulting in a 1.4 error rate.

5 Q How much was the dealership charged back as a result of
6 audit?

7 A Total audit charge back was \$24,780.

8 Q Is that the highest amount that they had been charged
9 back in the last three previous audits?

10 A I don't recall.

11 Q In your experience, is that a high amount for a charge
12 back?

13 A Yes, it is high.

14 Q Based on your experience with the audit process in the
15 dealerships, would the controller of the dealership have been
16 told what charge back the dealership got from the audit?

17 MR. BROOME: I am going to object to him speculating
18 what someone may have been told.

19 THE COURT: All right. Objection sustained.

20 BY MS. WICK:

21 Q Mr. Creecy, based on your experience in the audit, who is
22 the entity in the dealership that financially deals with the
23 mechanism of a charge back?

24 A That would normally be the controller or office manager.

25 Q Somewhere in your paperwork, you had a closing meeting or

1 a closing conference?

2 A Yes.

3 Q I think it's on page 3 of the exhibit, Government's
4 Exhibit 25. Just tell me if that's the right location.

5 A Yes.

6 MS. WICK: Your Honor, if we could publish that
7 exhibit to the jury?

8 THE COURT: Yes.

9 BY MS. WICK:

10 Q Looking at the top, who was present at your closing
11 meeting?

12 A Randy Visser and Forest Housner.

13 Q And you?

14 A And myself, sorry.

15 Q Was there anyone else present?

16 A No.

17 Q What date did you have this audit closing meeting?

18 A March 15th.

19 Q What year?

20 A 2013.

21 Q I believe your closing report is two and a half pages?

22 So rather than read all of that, could you just maybe tell the
23 jury what the -- could you summarize it, or maybe hit the
24 highlights of kind of what the recommendations were.

25 A The recommendations discussed were correct application

1 and procedures regarding rental car units, the continued use
2 of what we refer to as a vin lookup for purposes of incentive
3 application. The reminder for the use of incentive claim
4 forms for anything requiring customer cash or receiving
5 customer cash. The recommendation that any incentive schedule
6 be reconciled regularly at least once a month. Reminder on
7 reporting special APR sales. VIN/Zip as it uses the sale type
8 C. The current rules and requirements under what is called
9 our Fleet-Tail program. A reminder of reconciliation of
10 dealership, physical inventory with Nissan's inventory. Any
11 questions they have, they may contact C & I directly. The
12 requirements of accurate reporting via the RDR system all
13 sales.

14 Q Let me pause you there, because that was a very good
15 summary. I want to touch on that specific point. If we could
16 call out on the next page where you just started to read under
17 other audit recommendations. And the section, just that
18 section "Other audit recommendations to consider..." okay.
19 Could you read number one again.

20 A "Dealership should accurately report via the RDR system
21 all sales. Customer name, address, and date of sale reported
22 should match bills of sale and retail or lease finance
23 contracts."

24 Q Okay. Even though it says, "Customer name, address, and
25 date of sale reported should match bills of sale..." When you

1 were talking with them about dealership should accurately
2 report the RDR system, would that have included which
3 dealership that the car was sold at?

4 A That would be implied.

5 Q Did you actually tell them, you need to accurately report
6 which dealership this car is sold at?

7 A I never said that specifically.

8 Q Why would you not say that specifically?

9 A Because I have conducted an audit at that dealership. I
10 would not bring another dealership into discussion.

11 Q What is the focus of your audit in terms of the types of
12 errors that you are discussing with them?

13 A I am not sure I understand the question.

14 Q What I mean is is that all of the things that you just
15 listed, those are very specific like how to do this -- would
16 you say that the purpose of your audit is to make sure that
17 they RDR'd everything correctly?

18 A Yes.

19 Q Is the purpose of your audit to ferret out the fraud?

20 A No.

21 Q So a lot of your instructions were, here is how to do
22 this, here is how you do this, so they can do it correctly?

23 A Correct.

24 Q But would you have instruct them, you need to be honest
25 and not lie?

1 A I think that would be implied, but I would not say that
2 specifically.

3 Q How many times, taking a look at your summary, how many
4 times do you think you spoke with them about how important it
5 was to accurately report the RDR information?

6 A I don't know the exact number, but I would say several.

7 Q Okay. Now, I know at this meeting, the controller was
8 not present. In other audit meetings, closing meetings that
9 you have, have controllers been present at those meetings?

10 MR. BROOME: Judge, again, I don't see the relevance
11 if somebody was present in a meeting five years ago. Ms.
12 Branch was not there.

13 THE COURT: Do you want to ask if there was any
14 audit meeting that Ms. Branch attended, that could be a
15 relevance question.

16 MS. WICK: No, Your Honor, she was not present at
17 this meeting. But I think given the witness's experience, he
18 could talk about his dealings with controllers.

19 THE COURT: If you have a question about what
20 happened at Serra Nissan or Serra Visser Nissan or with
21 respect to Ms. Branch, that's relevant. But what other
22 dealerships do, unless you can establish how that would be
23 relevant to the facts in this case, then the Court is not
24 going to allow that questioning.

25 MS. WICK: In terms clarification, his background

1 and experience dealing with controllers at dealerships, can he
2 talk about the general job responsibilities and duties that
3 they do or not?

4 THE COURT: Why is it relevant what other
5 dealerships do? Why can't you focus on what Serra Nissan and
6 Serra Visser Nissan do?

7 MS. WICK: I understand, Your Honor.

8 BY MS. WICK:

9 Q Mr. Creecy, was Ms. Branch present at the audit closing
10 meeting?

11 A No.

12 Q Before that e-mail that we just showed, had you ever had
13 any conversations with Ms. Branch?

14 A No.

15 Q Earlier when we were talking, my understanding was that
16 the purpose of your audit process is finding errors in an RDR
17 process, but not necessarily intentionally misreported
18 information; is that fair?

19 A Yes.

20 Q Do you know of a way that Nissan North America can check
21 the information submitted in the RDR process outside of the
22 audits that you conduct? You look confused. That was a bad
23 question. I can rephrase.

24 A Yes, please.

25 Q Other than the audit process that you just walked us

1 through, is there a way that Nissan has to verify the RDR
2 information submitted by dealerships?

3 A Not that I'm aware of.

4 Q Were you contacted by anyone at Serra Nissan in 2014?

5 A Yes.

6 Q Who were you contacted by?

7 A Randy Visser.

8 Q Do you remember how he contacted you?

9 A I believe it was e-mail.

10 Q I am handing you what has been previously marked as
11 Government's Exhibit 31. Can you take a look at that document
12 and tell me if you recognize it?

13 A Yes.

14 Q What is that?

15 A This is a letter received via e-mail from Randy Visser.

16 Q Can you take a look at it and tell me if that's true an
17 accurate copy of the e-mail and the letter that you received?

18 A It does appear so, yes.

19 MS. WICK: Your Honor, at this time, the government
20 would move to admit Government's Exhibit 31?

21 MR. BROOME: We have no objection.

22 THE COURT: It's admitted.

23 MS. WICK: Permission to publish, Your Honor?

24 THE COURT: Granted.

25 BY MS. WICK:

1 Q I think the e-mail that you were referring to is on page
2 20 of Government's Exhibit 31. No. Try three.

3 THE COURT: I don't think there is a third page, is
4 there?

5 BY MS. WICK:

6 Q No, I am sorry. I apologize.

7 A moment ago you said that he e-mailed you. What did
8 he attach to the e-mail?

9 A He attached a letter.

10 Q Is this the letter that you were referencing?

11 A Yes.

12 Q So let's pause for a moment because obviously I kind of
13 went in reverse here, and I apologize for that. He said he
14 e-mailed you. I am handing you what's been previously marked
15 as Government's Exhibit 32. I apologize for the confusion.
16 Can you look at 32 and tell me if that's the e-mail that you
17 are referring to?

18 A Yes, it is.

19 Q What is on top of that e-mail?

20 A The e-mail header showing my name, the date, who it was
21 to -- or no, this is not the e-mail I was referring to with
22 the letter.

23 Q I am sorry. I couldn't hear what you said.

24 A The question was is this the e-mail I was referring to
25 regarding the letter. This is not the e-mail referring --

1 Q It's not.

2 A No.

3 Q What is that e-mail?

4 A This is an e-mail response that I sent back to Randy
5 Visser after the letter was received.

6 Q Okay. At the bottom of your e-mail, is that his initial
7 e-mail to you?

8 A No.

9 Q What is that?

10 A That is another follow-up that he sent to myself and Mr.
11 Jeff Zhang asking about the letter.

12 Q Can you give me just one second. Mr. Creecy, we got all
13 sorts of confusion here. Let me go back for a moment.

14 You said your initial contact from him was what?

15 A An e-mail.

16 Q An e-mail. Do you remember when the e-mail was sent?

17 A On the 12th.

18 Q On the 12th. Given his initial e-mail to you, is that
19 the e-mail at the bottom of that page?

20 A I do not believe so, no.

21 Q What e-mail -- okay. Why don't you walk us through the
22 sequence of contacts, okay, when did he contact you, when did
23 he send it, and then we'll figure out what happened with the
24 e-mails.

25 A He sent an e-mail on the 12th with a letter attached

1 which is the one I referenced previously. Then shortly later
2 that day, for another e-mail, copying myself and Mr. Zhang
3 asking about the letter again, which is the e-mail at the
4 bottom of this exhibit.

5 Q Okay. So I think I understand the confusion. The e-mail
6 at the bottom of that is the second e-mail?

7 A Yes.

8 Q So the first e-mail that he sent, did it attach the
9 letter that you looked at that was Exhibit 31?

10 A Yes.

11 Q Okay. So let's back up and look at Exhibit 31, again,
12 and I apologize for the confusion. This was his first
13 communication to you, if I am understanding you right?

14 A Yes.

15 Q Okay. So 31 has already been admitted. What did he tell
16 you in his first communication?

17 A In this letter?

18 Q In Exhibit 31, if I understood you, he e-mailed you and
19 he attached that letter, and that was the first you heard from
20 him?

21 A He stated that during the self audit, they had identified
22 15 deals that were RDR'd under the incorrect dealer number.
23 That the 15 deals were listed, and that they were RDR'd
24 incorrectly under dealer 2000 when they should have been RDR'd
25 under dealer 5335. He then asked if I could please correct

1 this in Nissan's records, and let him know what other steps
2 were needed to resolve the discrepancy.

3 Q Was there anything else on the next page?

4 A A continued list of the 15, as well as a statement to
5 please advise what we need to do to correct these.

6 (Cell phone ringing in courtroom.)

7 Q Okay. So he sends the e-mail and he sends that letter.
8 Now, if I understood you before, the e-mail that's in
9 Government's Exhibit 32 was his second e-mail after this
10 letter; is that right?

11 A Yes.

12 Q And we're back on track. Okay? What was the date of the
13 second e-mail in Government's Exhibit 32?

14 A On the 12th.

15 Q So this letter is dated the 11th. He sends the e-mail
16 the next day on the 12th. And on the top of that e-mail is
17 what?

18 A My response to Randy Visser.

19 Q Looking at Government's Exhibit 32, is that a true and
20 accurate copy of his e-mail and your response?

21 MR. BROOME: Judge, if this will speed up the
22 process, I will agree to admit Exhibit 32.

23 THE COURT: I am sorry, you will agree to what?
24 It's admissible?

25 MR. BROOME: Yes, Your Honor.

1 THE COURT: It's admitted.

2 MS. WICK: Thank you, Your Honor. Actually, I
3 apologize. It had nothing to do with the admission. It was
4 just a confusion of dates.

5 BY MS. WICK:

6 Q So 32 is his e-mail and your response?

7 MS. WICK: Permission to publish, Your Honor?

8 THE COURT: Granted.

9 BY MS. WICK:

10 Q So if I am understanding you, he e-mails you on the 12th
11 saying what?

12 A Saying please look at the letter attached and advise what
13 we need to do.

14 Q Then what was your response on August 21st?

15 A My response is that we have analyzed your request to
16 correct the 15 deals, identify them in the letter, but are
17 unable to do so among reasons because the 15 sales at issue
18 are well below the general sales audit period under the
19 Alabama dealer statute.

20 Q Did you prepare that?

21 A Yes.

22 Q Did you e-mail that to Mr. Visser?

23 A Yes.

24 Q When you said the 15 sales at issue were well beyond the
25 general sales audit period, what did you mean by that?

1 A I meant they were outside the available audit scope.

2 MS. MURNAHAN: Your Honor, I believe the jury is
3 having some technological difficulties with the monitors up
4 there.

5 All JURORS: We don't have anything.

6 THE COURT: Okay. Let me give y'all a couple of
7 requests, please. If you have trouble hearing a witness, let
8 us know right away, please, because we want to make sure you
9 hear everything. If you have trouble with the monitor, let us
10 know, please.

11 And we're getting close to five o'clock. Our goal is
12 to make you all as comfortable as possible and to be
13 considerate of any obligations you may have. So anything that
14 you need to communicate about, I have a child I need to go pick
15 up, anything along those lines, please let Tammi know, and
16 we'll make sure we do our best to accommodate that.

17 Is there anybody who is going to have a problem today
18 if we run past five o'clock so that we can make sure we get
19 through Mr. Creecy's testimony? Okay. Terrific. Thank you.

20 THE COURTROOM DEPUTY: Are the monitors on now?

21 All JURORS: Yes. Thank you.

22 THE COURT: Thanks for letting us know. I
23 appreciate that.

24 MS. WICK: Your Honor, just briefly, given that
25 these --

1 THE COURT: You can retrace whatever you need to
2 retrace.

3 MS. WICK: Well, given that it's 4:54, with the
4 Court's permission, these exhibits were admitted, and rather
5 than go back, I will leave the jury to review them during
6 deliberations, if that's okay with the Court?

7 THE COURT: That's fine. It sounds good.

8 BY MS. WICK:

9 Q Okay, Mr. Creecy. Sorry. Let's go back. So you told
10 him it was outside the scope of the audit period, and there
11 was nothing you could do?

12 A Yes.

13 Q What happened after that, did he contact you again?

14 A After that, he sent an e-mail asking for an address to
15 mail a letter.

16 Q Did he mail a letter after you sent him the mailing
17 address?

18 A Yes.

19 Q I am showing you what has been previously marked as
20 Government's Exhibit 33. Do you recognize that document?

21 A Yes.

22 Q What is that document?

23 A This is the letter that Randy Visser sent after sending
24 the e-mail address.

25 Q In reviewing -- is that a true and accurate copy of the

1 letter that Mr. Visser --

2 MR. BROOME: Judge, I will agree. I have no
3 objection to 33 being admitted. Or if it will save time,
4 well, that's fine.

5 THE COURT: Okay. It's admitted.

6 MS. WICK: Permission to publish, Your Honor?

7 THE COURT: Yes.

8 BY MS. WICK:

9 Q What did he send in that letter, Mr. Creecy?

10 A In that letter, he states that he, Understands Nissan's
11 decision and will abide by how Nissan wants to address this
12 issue. However, if the audit period under the franchise act
13 is the issue, they are willing to waive that provision, or any
14 other technicality for regarding this issue to prevent this
15 issue from being corrected.

16 He also states that he has attached a sheet on how
17 they have calculated incentives paid versus incentives earned,
18 and that Nissan agrees with his calculation; please accept the
19 check to settle the issue.

20 Q Attached to that letter are two attachments, the
21 calculation he is referencing in a check. Prior to the
22 government showing you those -- had you ever seen the
23 attachment to that letter?

24 A No.

25 Q Where did that letter in fact go?

1 A That went to the headquarters in Franklin, Tennessee, at
2 Nissan North America to the sales audit department.

3 Q Was that the address that you had provided him?

4 A Yes.

5 Q In your careers as an auditor, have you ever seen a
6 dealer more than a year after the sale proactively correct RDR
7 information?

8 A No.

9 Q How often have you seen dealers conduct a self audit a
10 year and a half after the sale?

11 A Never if ever.

12 Q Have you seen a self charge back in return in funds year
13 and a half later?

14 A No.

15 Q How often do you get \$64,800 checks from dealers?

16 A Never.

17 MS. WICK: No further questions, Your Honor.

18 THE COURT: Mr. Creecy, do you need some water?

19 THE WITNESS: If I could, please.

20 CROSS EXAMINATION

21 BY MR. BROOME:

22 Q It looks like Mr. Visser was trying to correct that
23 mistake and give you your money back, wasn't he?

24 A It looks like it.

25 Q Let me ask you this, in all these documents, carbon

1 copies -- I'm old. I guess we don't have carbon copies
2 anymore, cc's -- was Ms. Branch mentioned in any of those
3 letters?

4 A Not that I recall.

5 Q If you want to look, is she ever carbon copied with any
6 of your responses, e-mails, or text messages, or anything?

7 A Not that I recall.

8 Q Now, let's look at it to be sure. Government's Exhibits
9 32 and 33 and 34. I don't want you to guess or assume.

10 Let's look at 33, your letters, or Mr. Visser's letter
11 to you. Does it show who that letter was sent to?

12 A It was sent to me.

13 Q Sir?

14 A It was sent to me.

15 Q It's not carbon copied to Ms. Branch or cc'd to Ms.
16 Branch or anything?

17 A No.

18 MR. BROOME: Judge, if I could ask their assistance
19 in pulling those exhibits back up. I don't see the exhibits
20 here.

21 THE COURT: You need 32, Mr. Broome?

22 MR. BROOME: Yes, Your Honor.

23 THE COURT: The e-mail chain?

24 MR. BROOME: Yes, Your Honor.

25 THE COURT: Can we pull that up, please, Ms. Gold.

1 Thank you.

2 MR. BROOME: Thank you.

3 BY MR. BROOME:

4 Q On Government's Exhibit 32, does that show anything going
5 to Ms. Branch?

6 A No.

7 Q Can we pull up 33, please -- 31 where the deals are
8 listed. Does that show that it went to Ms. Branch?

9 A I am sorry?

10 Q 31, I believe that's what's on the screen?

11 THE COURT: That's the two-page document, so you may
12 need to put up the second page.

13 By MR. BROOME:

14 Q Please. The second page, please.

15 A No, it does not.

16 Q During your audit process, you contacted Ms. Branch, I
17 think, on Government's Exhibit 21 on March the 8th, 2013?

18 A Yes.

19 Q And did she cooperate and furnish you all the information
20 you requested?

21 A As I recall, yes.

22 Q You recall having to call her back and say you left this
23 out, or did she get everything to you?

24 A I don't recall whether any deals were missing or not when
25 I showed up.

1 Q Okay. When you showed up, did you ever talk to Kim
2 Branch when you came for the actual audit?

3 A I recall having a conversation in the middle of the audit
4 regarding incentives, application of incentives.

5 Q With Ms. Branch?

6 A With Ms. Branch.

7 Q And was she able to give you all the information that you
8 needed?

9 A As far as I recall, yes.

10 Q When you had your closing meeting, is that what you call
11 it --

12 A Yes.

13 Q -- was Ms. Branch present?

14 A No.

15 Q During your closing meeting, did you have any
16 conversations with Randy Visser or Forest Housner about the
17 pooling of sales?

18 A No.

19 Q Do you even know what I am talking about when I am
20 talking about pooling of sales?

21 A I know the term, but I don't know what you are
22 referencing, but I know I did not say the words pooling of
23 sales.

24 Q Have you ever heard the word or the term continuous
25 marketing operation, CMO?

1 A Not that I can recall.

2 Q Okay. In any of your audits -- and you have been,
3 working there how long, doing the audit 11 years?

4 A About 11 years.

5 Q In any of your audits during the 11 years, did you have
6 other dealers that owned more than one Nissan franchise?

7 A Yes.

8 Q And isn't it correct that some of those franchises
9 combined their deals to meet their incentives?

10 A Not that I am aware of.

11 Q Have you ever audited two dealerships together -- that
12 were owned by the same person, two or more?

13 A I don't conduct audits simultaneously. Each audit is
14 conducted individually.

15 Q So that wasn't a fair question. I am sorry.

16 Other than talking to Ms. Branch, when you came for
17 the audit, did you have any other conversations with her about
18 that audit that you did in March of 2013?

19 A Not that I recall.

20 MR. BROOME: That's all I have. Thank you, sir.

21 THE COURT: Any follow-up?

22 MS. WICK: Just one question.

23 REDIRECT EXAMINATION

24 BY MS.WICK:

25 Q Mr. Creecy, if you went onsite to do an audit and you

1 were provided at Serra Nissan a Birmingham deal jacket,
2 looking at that paperwork, would you have any way of knowing
3 that that car had in fact been sold at the Cullman store?

4 A Not that I am aware of, no.

5 MS. WICK: Thank you, Your Honor. No further
6 questions.

7 MR. BROOME: I don't have anything else, Your Honor.
8 Thank you.

9 THE COURT: All right, Mr. Creecy, you are excused.
10 Thank you.

11 Ms. Wick, is there anything else you want to try to
12 squeeze in this afternoon, or do you think that will wrap
13 things up for today?

14 MS. WICK: We will like to wrap things up, thank
15 you.

16 THE COURT: Thank you very much for your attention
17 today. Let's plan -- we will start tomorrow morning at nine
18 o'clock. So if you can please plan to be here at about ten to
19 9:00, so that we make sure we have everybody ready to get into
20 the jury box. That would be great.

21 I am going to repeat my instruction that I gave you
22 earlier today. You may not discuss this case with anyone.
23 You may not do any research independently. Please don't look
24 on the internet for information. Don't use your cell phone to
25 look for information -- yes, sir? Did you raise your hand? I

1 thought I saw a hand go up. And if you should just be looking
2 at a newspaper and see anything that's even remotely related
3 to this case, please stop reading the article. All right?
4 Again, thank very much for your attention today. Have a nice
5 evening.

6 (Jury released at 5:08 p.m.)

7 (In open court.)

8 THE COURT: Any business we need to discuss?

9 MS. WICK: Your Honor, I think there appears to be a
10 missing exhibit, but I think it's just kind of somehow got
11 lodged in one of the other folders. We're going to sort that
12 out. I think it's already been admitted. We're just finding
13 it for the folder.

14 THE COURT: Okay. Sounds good. All right.

15 MR. BROOME: Judge, I don't think I did it.

16 THE COURT: Let's be ready to start in the morning
17 at 9:00, please.

18 ALL COUNSEL: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Proceedings concluded at 5:09 p.m.)
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